APPENDIX
Volume I

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-641

EDWIN A. AND HELEN B. SNOW
Petitioners,

—v.—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR CERTIORARI FILED OCTOBER 12, 1973
CERTIORARI GRANTED JANUARY 7, 1974

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Note: The opinions of the Tax Court and the Court of Appeals appear in the Appendix to Snow's Petition for a Writ of Certiorari at pages 13-44.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

UNITED STATES TAX COURT

November 16, 1970	–	Plaintiff Snow's petition filed
January 7, 1971	–	Answer filed by Commissioner
November 16, 1971	–	Trial at Cincinnati, Ohio, before Judge Bruce
June 30, 1972	–	Findings of fact and opinion filed by Judge Bruce
June 30, 1972	–	Decision for Commissioner entered by Judge Bruce

APPELLATE PROCEEDINGS

September 5, 1972	–	Notice of Appeal to U. S. Court of Appeals for the Sixth Circuit filed by Petitioner Snow
July 17, 1973	–	Opinion and Judgment of the Court of Appeals for the Sixth Circuit (Tax Court decision sustained)
October 12, 1973	–	Petitioner for Certiorari filed
January 7, 1974	–	Certiorari granted

UNITED STATES TAX COURT

Docket No. 7125-70

EDWIN A. SNOW and HELEN B. SNOW,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION OF FACTS

(Filed November 16, 1971)

It is hereby stipulated that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part thereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated. Either party hereby expressly reserves the right to object to the admission in evidence of any of the following facts or exhibits, however, on the grounds of materiality and relevancy.

1. Petitioners Edwin A. Snow and Helen B. Snow were, on the date of the filing of the petition in this case, residents of Cincinnati, Ohio. Petitioners filed their joint Federal income tax return for the calendar year 1966 with the District Director, Internal Revenue Service, Cincinnati, Ohio; a true and correct copy of that tax return is attached hereto and marked as joint Exhibit 1-A.

2. On July 8, 1966, Mr. Snow executed what was called an "Agreement" as a limited partner in an entity known as the Burns Investment Company. A true and correct copy of that Agreement form is attached hereto and marked as joint Exhibit 2-B.

3. Subsequently on April 3, 1967, Mr. Snow along with all of the other parties to that original Agreement, executed an amendment to that Agreement. A true and correct copy of that Amendment to Agreement is attached hereto and marked as joint Exhibit 3-C.

4. Form 1065, U.S. Partnership Return of Income, was filed by Burns Investment Company for the taxable year beginning August 1, 1966 and ending December 31, 1966. A true and correct copy of that tax return is attached hereto and marked as joint Exhibit 4-D.

5. By way of invoice, Crossbow, Inc. billed the Burns Investment Company as follows:

Invoice No.	Date	Amount
265	7-15-66	$ 8,684.44
266	7-31-66	4,215.89
279	12-09-66	8,863.73
280	12-30-66	12,500.00
281	12-30-66	2,516.38
		$36,780.44

True and correct copies of all of those invoices are attached hereto and marked as joint Exhibits 5-E thru 9-I.

6. Sometime during March of 1965, Mr. Edwin A. Snow executed what was called a "Certificate of Limited Partnership" as a limited partner in an entity known as the "Echo Development Company." A true and correct

copy of that certificate is attached hereto and marked as joint Exhibit 10-J.

7. Also during March of 1965, Mr. Edwin A. Snow executed what was called a "Certificate of Limited Partnership" as a limited partner in an entity known as "Courier Enterprises." A true and correct copy of that document is attached hereto and marked as joint Exhibit 11-K.

8. Forms 1065, U.S. Partnership Return of Income, were filed by Echo Development Company and Courier Enterprises for the taxable year 1966. True and correct copies of those returns are attached hereto and marked as joint Exhibits 12-L and 13-M.

/s/ HAROLD W. WALKER

/s/ BURGESS DOAN,
Counsel for Petitioners.

/s/ K. MARTIN WORTHY,
Chief Counsel,
Internal Revenue Service.

[1] BEFORE THE
UNITED STATES TAX COURT

DOCKET NO. 7125-70

EDWIN A. SNOW and HELEN B. SNOW,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Courtroom 607, U. S. Court of Appeals
Post Office and Courthouse Building
5th and Walnut Streets
Cincinnati, Ohio
Tuesday, November 16, 1971

Met, pursuant to notice, at 11:10 o'clock a.m.

BEFORE:

HONORABLE J. GREGORY BRUCE, Judge.

APPEARANCES:

BURGESS L. DOAN, Esq., and H. W. WALKER, Esq.
522 Dixie Terminal Building
Cincinnati, Ohio 45202
appearing on behalf of the Petitioner.

RUDOLPH L. JANSEN, Esq., Internal Revenue Service
7504 Federal Office Building
Cincinnati, Ohio
appearing on behalf of the Respondent.

* * *

[3] **PROCEEDINGS**

THE CLERK: Docket Number 7125-70, Edwin A. Snow and Helen B. Snow. State your appearances for the record please.

MR. DOAN: Burgess L. Doan for the Petitioners.

MR. WALKER: H. W. Walker for Petitioners.

MR. JANSEN: Rudolph L. Jansen for Respondent.

THE COURT: All right, do you wish to make opening statements or wait until after you get the stipulation of facts in? You can suit yourself. If you wish to refer to the stipulation in your opening statement you may offer it now or later.

MR. DOAN: My opening statement will refer to the stipulation of facts, Your Honor.

THE COURT: Suit yourself when you want to offer it.

MR. DOAN: I believe we agree that upon conclusion of my opening statement we would offer the stipulation of facts, Your Honor.

THE COURT: All right.

OPENING STATEMENT ON BEHALF OF PETITIONER

By Mr. Doan

MR. DOAN: May it please the Court, the issue to be decided in this case is whether Petitioner is entitled to deduct on his 1966 Federal income tax return his distributive share of a net operating loss sustained for the taxable year 1966 by Burns Investment Company, a partnership. It is the [4] Petitioner's position that his distributive share of the net operating loss sustained by Burns Investment Company resulted from expenses incurred in inventing, develop-

ing and obtaining patents on a special purpose incinerator device during the taxable year 1966.

It is further the Petitioner's position that a partner is engaged in the business of the partnership of which he is a member; that the Petitioner was engaged in the trade or business of inventing, developing and obtaining patents on new products for commercial exploitation during the taxable year 1966 by virtue of his extensive participation in various projects, and therefore he is entitled to deduct his distributive share of the net operating loss sustained by Burns Investment Company during the taxable year 1966, since that loss arose from research and development expenses incurred, accrued and paid during the taxable year 1966 in connection with the Petitioner's trade or business.

The essential facts to be established in this case are as follows: the Petitioner was, during the taxable year 1966, a partner in Burns Investment Company, a partnership, which was organized and operating under the laws of the State of Ohio; that Burns Investment Company was formed during the taxable year 1966 for the purpose of developing a special purpose incinerator device for the consumer and industrial markets; and that device is known as the Trashaway. Burns [5] Investment Company sustained a net operating loss in the amount of $36,780.44 for the calendar year 1966, of which the Petitioner's distributive share was $9,195.00 which was claimed on his 1966 Federal income tax return.

The Petitioner was during the taxable year 1966 a partner in a second partnership known as Echo Development Company which was also a partnership organized and operating under the laws of the State of Ohio. The Echo Development Company was formed on March 22, 1965 for the purpose of developing a new consumer product in the electronics field, namely a telephone answering device.

The telephone answering device was completed during the early part of 1966 and the rights thereto were held available for sale, during the taxable year 1966.

The petitioner was during the taxable year 1966 a partner in a third partnership known as Currier Enterprises. That also was a partnership organized and operating under the laws of the State of Ohio. Currier Enterprises was in the business of developing a tape recorder for the purpose of obtaining patents on that tape recorder and selling the rights to it or licensing the rights to it to others.

The Burns Investment Company was likewise engaged in the business during 1966 of developing the Trashaway, the incinerator device for the purpose of obtaining patents on that device and selling the rights or licensing others to [6] manufacture it.

The Petitioner proposes to meet his burden of proof in the following manner. The Petitioner and the Respondent have jointly stipulated that Burns Investment Company was a partnership organized and existing under the laws of the State of Ohio and that Petitioner was a member of that partnership during the taxable year 1966. A true and correct copy of the partnership agreement is attached to the stipulation of facts as Joint Exhibit 2-B and is incorporated therein.

The Petitioner and Respondent have further stipulated that Burns Investment Company filed its Federal income tax return with the District Director at Cincinnati, Ohio for the taxable year 1966 and a true and correct copy of that tax return is likewise attached to the stipulation of facts as Joint Exhnbit 1-A. The Federal income tax return will further show that the Petitioner was a partner in Burns Investment Company. It will show the amount of the net operating loss sustained by the partnership and the amount

of the Petitioner's distributive share of that partnership loss.

The Petitioner and Respondent have further stipulated that Burns Investment Company billed a corporation by the name of Crossbow, Inc. for an amount of $36,780.44. A true and correct copy of those invoices are attached to the stipulation of facts, and incorporated therein as Joint Exhibits 5-E through 9-I.

[7] Oral testimony will show that those invoices were paid during the taxable year 1966 and will further show the nature of the expenditures represented by those invoices.

The Petitioner and Respondent have jointly stipulated —

THE COURT: Are you just reading the stipulation?

MR. DOAN: No, Your Honor.

THE COURT: All right. It will be in the record I assume. I just don't want a duplication. Refer to it if necessary to bring out the points that you expect to offer proof on.

MR. DOAN: The Petitioner and Respondent have further jointly stipulated that the Petitioner was a partner in Echo Development Company during the taxable year 1966 and the partnership agreements will be offered as Joint Exhibit 10-J to the stipulation of facts. Oral testimony will further show that Echo Development Company was engaged in the business of inventing, developing and obtaining patents on a telephone answering device and that the rights to this device were available for licensing or sale during the taxable year 1966.

The Petitioner and Respondent have further stipulated that Petitioner was in fact a member of that partnership. Oral testimony will show that Currier Enterprises was engaged in the business of inventing, developing and obtaining patents on this tape recording device during the taxable year 1966. The [8] Petitioner and Respondent have

also jointly stipulated that Echo Development Company and Currier Enterprises have filed Federal income tax returns, form 1065 for the taxable year 1966, and these will further show that the Petitioner was a partner in those partnerships.

The Petitioner will show through oral testimony and the introduction of documents that he was engaged in the trade or business of inventing, developing and obtaining patents on at least three devices during the taxable year 1966, namely the Trashaway through Burns Investment Company, the telephone answering device through Echo Development Company, and a tape recording device through Currier Enterprises; and finally, that by virtue of these combined activities the Petitioner was, during the taxable year 1966, carrying on a trade or business of inventing, developing and obtaining patents, and that expenses in question were incurred in connection with that trade or business.

THE COURT: Let me ask you a question. You stated in the beginning something about the principal issue involved.

MR. DOAN: Yes, Your Honor.

THE COURT: Can you restate that for my benefit?

MR. DOAN: The issue to be decided in the case is whether the Petitioner is entitled to deduct on his 1966 Federal income tax return his distributive share of a net operating loss sustained for the taxable year 1966 by Burns [9] Investment Company which is a partnership.

THE COURT: Very well.

OPENING STATEMENT ON BEHALF OF RESPONDENT

By Mr. Jansen

MR. JANSEN: If it please the Court, the case does involve income tax for the year 1966 in the amount of

$6,247.00. I think that Mr. Doan has adequately stated the issue involved, and also he has given to the Court some insight as to the basic facts involved in this case.

It is Respondent's position, Your Honor, that at no time during the taxable year 1966 was the Petitioner Edwin A. Snow in the trade or business of inventing. It is also our position that at no time during the taxable year 1966 was the partnership known as the Burns Investment Company an existing trade or business.

Your Honor, the parties have agreed to a stipulation of facts in this case and at this time I would like to present a written stipulation of facts together with attached exhibits 1-A through 13-M.

Your Honor the parties have also agreed to an oral supplementary stipulation of facts which includes Joint Exhibits 14-N through 22-V.

THE COURT: All right. You have a stipulation of facts with Joint Exhibits 1-A through 13-M, and in addition to that you wish to make an oral stipulation.

[10] MR. JANSEN: That's right, Your Honor.

THE COURT: Plus exhibits in connection with that.

MR. JANSEN: Well, Your Honor, the oral stipulation —

THE COURT: Wait a minute. Let's take them one step at a time. The stipulation of facts together with Joint Exhibits 1-A through 13-M inclusive will be received in evidence.

(The stipulation of facts and the documents previously marked for identification as Joint Exhibits Nos. 1-A through 13-M were received in evidence.)

THE COURT: Now you can offer the oral stipulation. You don't have that in writing?

MR. JANSEN: Your Honor, the oral stipulation relates only to documents.

THE COURT: Then in effect you are orally agreeing as to the identification of documents.

MR. JANSEN: That's right, Your Honor. Those documents are numbered and lettered 14-N through 22-V.

THE COURT: All right Joint Exhibits 14-N through and including 22-V and the oral stipulation in regard thereto will be received in evidence.

(Oral stipulation of facts and the documents previously marked for identification as Joint Exhibits Nos. 14-N through 22-V were received in evidence.)

THE COURT: Does Petitioner wish to proceed?

MR. DOAN: Your Honor, for our first witness I would [11] like to call the Petitioner, Mr. Edwin A. Snow.

THE COURT: Well, if it isn't too inconvenient, I will permit the witness to stand where you are and you can stand off to the side and interrogate him. We simply do not have a regular witness chair here where we can seat you and at the same time see and hear you.

Edwin A. Snow

was called as a witness on behalf of the Petitioner, and, having been first duly sworn, testified as follows:

THE CLERK: State your name and address for the record.

THE WITNESS: Edwin A. Snow, 2444 Madison Road, Cincinnati, Ohio.

DIRECT EXAMINATION

BY MR. DOAN:

Q. Mr. Snow, where are you employed?

A. Procter and Gamble.

Q. What position do you hold with that company.

A. I'm Vice President and member of the Board of Directors.

Q. Mr. Snow, how long have you been with the Procter and Gamble Company?

A. Since September 1, 1933.

Q. Could you briefly describe the positions you have held with the company?

[12] A. I joined the advertising department, then became Associate Advertising Manager of the Company, then the Advertising Manager and Vice President for Advertising; then I moved from Advertising to General Management. Over the years I managed a number of the operating divisions of the company and I presently have five operating divisions under my wing, and that is my present position.

Q. Mr. Snow, we are here primarily concerned with your Federal income tax return for the taxable year 1966. Were you actively engaged in any other business activity in addition to your position with Procter and Gamble Company during the taxable year 1966?

A. Yes.

Q. And what might I ask was that, Mr. Snow?

A. The principal business was involved in some partnerships which were concerned with developing, patenting and marketing new products.

Q. Do you remember the names of those partnerships?

A. Yes, there was Burns, Echo and Currier, as you described earlier.

Q. Were those partnerships operated under a written partnership agreement?

A. Two I believe were in 1966. All of them were in 1966, although earlier in 1966 it was a verbal agreement I had with the other parties.

[13] Q. When did you become a partner in Burns Investment Company?

A. Verbally and by agreement with some of the other partners I would judge around February or March of 1966.

Q. Now, why do you believe it to be January, or did you say February or March?

A. February or March to the best of my recollection.

Q. Why do you believe it to be that period of time?

A. Because I recall having seen a copy of a letter from the patent attorneys which indicated that the Burns device now called Trashaway had certain mechanical features which would be subject to, probably be subject to strong patent protection.

Q. Mr. Snow, could you briefly describe the nature of the business of Burns Investment Company?

A. Yes. It was in the business of developing, patenting, inventing and marketing the Trashaway incinerator device.

Q. Now was the Burns Investment Company engaged in this activity during the taxable year 1966?

MR. JANSEN: Your Honor, I'm going to object to the characterization of the activity of partnership as being a business. I think that's what is in issue in this case.

THE COURT: Will you read the question please, Miss Reporter?

(Question read.)

[14] MR. DOAN: Your Honor, thate's no characterization. I merely asked him the nature of the activity.

THE COURT: I gather he's asking for the activity of the Burns Investment Company.

MR. JANSEN: Yes, Your Honor, that's true. This question relates to the prior question, but in this particular question he did not mention the term business.

THE COURT: The other question has gone by and been answered and now we have only this one question before us. Overrule the objection.

BY MR. DOAN:

Q. You may answer the question.

A. Will you repeat the question?

Q. Will you describe the activity of Burns Investment Company during the taxable year 1966?

A. Yes, we were in the business of inventing, developing, perfecting, patenting and marketing the device known as Trashaway incinerator device.

MR. JANSEN: Your Honor, I'm going to object to the characterization of the activity as business and move that the answer be stricken.

THE COURT: On what grounds? You are objecting to him describing what the business or activity of the Burns Investment Company was?

MR. JANSEN: Yes, Your Honor. The question related [15] to the activity of the operation. The witness has responded by indicating that the business of that activity was certain things rather than indicating what the activity of the operation was.

THE COURT: I'll overrule the objection.

BY MR. DOAN:

Q. Now, Mr. Snow, may I ask you to describe to the Court the nature of your activity as a member of Burns Investment Company during the taxable year 1966?

A. Summarizing, I would say working with the other partners, principally Mr. Trott, counseling on the further development of the device, selection of the trade mark name, methods of marketing, and all of the various aspects that might have to do with bringing this product to market successfully.

Q. Mr. Snow, you mentioned Mr. Trott. Would you explain who Mr. Trott is?

A. Mr. Tross is one of the partners, the managing partner of the Burns Enterprises.

Q. Mr. Snow, did you participate in designing the Trashaway?

A. Only to, I'm not an inventor. It was only to the extent of suggesting modifications and further improvements, which in my judgment would make the product more successful and more marketable.

[16] Q. Did you at any time make recommendations as to the product design?

A. I did.

Q. Were your recommendations adopted by the partnership?

A. To some extent, yes.

Q. Mr. Snow, would you say that the design effort that went into the development of the Trashaway was a substantial part of the over all development?

MR. JANSEN: Objection, your Honor, the question calls for a conclusion.

THE COURT: I'll let him answer. Overrule the objection.

THE WITNESS: Yes.

BY MR. DOAN:

Q. Mr. Snow, is the design of a product something that can be patented?

A. Yes.

THE COURT: You don't mean as a separate patent, do you, but it enters into the article for which a patent is obtained.

MR. DOAN: Your Honor, I do mean precisely that.

THE COURT: Are you asking him if the design alone can be patented aside from the mechanical parts of the patents?

MR. DOAN: Yes, Your Honor.

[17] THE COURT: All right, go ahead.

THE WITNESS: It is my understanding the answer is yes.

THE COURT: Well, in this case did you get any separate patent for design?

THE WITNESS: No, sir.

THE COURT: You don't need to go into probabilities. Stick to facts.

BY MR. DOAN:

Q. In this particular case, you stated that you became a partner in Burns Investment Company in February or March of 1966. Was there an existing model of the incinerator device at that time?

A. Yes.

Q. Was that model changed after you became a member of Burns Investment Company?

A. Yes.

Q. Was it changed from a design standpoint?

A. Yes.

Q. Was it changed from the mechanical functioning standpoint?

A. To a degree, yes.

Q. Now, at the time then you became a partner in

Burns Investment Company, could you describe what Burns Investment Company owned or what it had?

[18] A. Well, at the time it had a crude prototype model, of an incinerator device, and early in the game in 1966 an indication as I said earlier from patent counsellor that the mechanical system which was used as a basis for this invention was patentable.

MR. DOAN: Will you please mark this as Petitioner's Exhibit 23.

THE CLERK: Petitioner's Exhibit 23 marked for identification.

(The document referred to was marked for identification as Petitioner's Exhibit No. 23.)

BY MR. DOAN:

Q. Mr. Snow, I hand you this document and ask you to briefly describe to the Court what it is.

A. This is a document from the law offices of Wood, Herron and Evans, patent counsel, stating that in their best opinion the device described –

MR. JANSEN: Objection, Your Honor. The question was what is this document and he's going into the content.

THE COURT: I'll sustain the objection. You were asked for the identification. It is a memorandum received from patent counsel whom you have just named. What is the date of it?

MR. DOAN: February 22, 1966, and at this time I would like to formally offer it in evidence.

[19] THE COURT: Any objection?

MR. JANSEN: Your Honor, we have no objection.

THE COURT: Document referred to will be received in evidence as Petitioner's Exhibit 23.

(The document previously marked for identification as Petitioner's Exhibit No. 23 was received in evidence.)

BY MR. DOAN:

Q. Mr. Snow, do you remember anything in particular that might have induced you to become a member in the partnership known as Burns Investment Company?

A. Yes, several things. First in my judgment, confirmed by patent counsel, they had a unique and marketable way of incinerating or burning trash. Second, I felt that there was a considerable market for this kind of equipment and no such piece of equipment was then available on the market.

MR. DOAN: Will you please mark this as Petitioner's Exhibit 24?

THE COURT: Let the Clerk give you the numbers. I don't want to get mixed up on the record.

THE CLERK: Petitioner's Exhibit 24 marked for identification.

(The document referred to was marked for identification as Petitioner's Exhibit No. 24.)

BY MR. DOAN:

Q. Mr. Snow, will you briefly describe this document to [20] the Court.

A. This is a communication from the law offices of Wood, Herron and Evans, which gives an opinion that the device described which is fundamental to the development of what is referred to —

MR. JANSEN: Your Honor, objection.

THE COURT: It is a memorandum received from patent counsel.

MR. DOAN: Just give the date.

THE WITNESS: Oh, I see. December 10, 1965.

MR. DOAN: At this time I formally offer it into evidence.

MR. JANSEN: Your Honor, there's no objection.

THE COURT: Document referred to will be received in evidence as Petitioner's Exhibit 24.

(The document previously marked for identification as Petitioner's Exhibits No. 24 was received in evidence.)

BY MR. DOAN:

Q. Mr. Snow, was Burns Investment Company successful in obtaining a patent on this device known as the Trashaway?

A. Yes.

Q. Have you applied for patents in any countries other than the United States?

A. Yes, in fourteen different countries. It is my understanding, although I can't name them, some of these patents [21] have been issued.

Q. Mr. Snow, is the Trashaway device in production today?

A. Yes.

Q. Can you go out on the market and buy a Trashaway?

A. Yes.

Q. Mr. Snow, are you active in Burns Investment Company today?

A. Very active in Burns Investment.

Q. What is your position with that company?

A. I'm Chairman of the Board of that Company.

THE COURT: That is a corporation?

MR. DOAN: No, Your Honor, I'll clarify that point.

THE COURT: All right.

BY MR. DOAN

Q. Mr. Snow, has the business form of Burns Investment Company changed since it was originally organized in 1966?

A. Yes.

Q. What form is it today?

A. A corporation, and my recollection is that we incorporated in 1969.

Q. Mr. Snow, you indicated earlier that you worked with a Mr. Trott.

A. Yes.

Q. Did you meet regularly with Hr. Trott during 1966?

[22] A. Yes, rather frequently, possibly an average of two or three time a month.

Q. Did you have occasion to communicate with him other than through meetings?

A. Yes, through correspondence and by telephone.

Q. Mr. Snow, you stated earlier that the business of, I'll rephrase that, that the activity of Burns Investment Company during the taxable year 1966 was to invent, develop, patent and commercially exploit the Trashaway.

A. Yes.

Q. Did you during 1966 contemplate that Burns Investment Company would manufacture this Trashaway?

A. Not in the original form of the prototype mode. We were hopeful however that continuing product development would lead to a finer product which would then be available for sale.

Q. Mr. Snow, how was the manufacturing and marketing of the Trashaway finally handled?

A. Handling is a rather broad term. The Burns Corporation was primarily responsible for perfecting the model and getting the product ready for market. During the course of that, what I would term mechanical development, we had a number of meetings and conversations between the partners with reference to how it should be marketed and various ways of test marketing the product once it was finally developed.

Q. Now, does Burns Investment Company actually manufac- [23] ture this item today?

A. I will say yes and no. Many of the component parts are manufactured outside, and some of the assembly work is done by Burns Corporation.

MR. DOAN: Will you mark this.

THE CLERK: Petitioner's Exhibit Number 25 marked for identification.

(The document referred to was marked for identification as Petitioner's Exhibit No. 25.)

BY MR. DOAN:

Q. Mr. Snow, I hand you this document and ask you to briefly describe what it is.

A. It is an illustration of a leaf burner filed June 10, 1968. I may have a little trouble here because when you say describe a document, my being a layman and not a lawyer, a description can be one of many things. I'm not sure my description is adequate.

THE COURT: You just do your best and let your counsel —

THE WITNESS: Direct me, and the Judge.

MR. DOAN: Your Honor, I offer into evidence at this time the patent on the leaf burning device which is known as the Trashaway.

THE COURT: That is the patent?

MR. DOAN: Yes, Your Honor.

[24] MR. JANSEN: Your Honor, Respondent has no objection.

THE COURT: Document received in evidence as described, as Petitioner's Exhibit 25.

(The document previously marked for identification as Petitioner's Exhibit No. 25 was received in evidence.)

BY MR. DOAN:

Q. Mr. Snow, you also mentioned you were a partner in a second partnership known as Echo Development Company.

A. Yes.

Q. Would you briefly describe the activities of Echo Development Company?

A. Again it has to do with the development, inventing, patenting, and marketing of a new product, and this is a mechanical device that is referred to as a telephone answering piece of equipment.

Q. Do you remember when you became a member of that partnership?

A. Yes, in 1965.

Q. Do you know, Mr. Snow, if Echo Development Company was successful in obtaining a patent on that telephone answering device?

A. The answer is yet, it was successful.

THE CLERK: Petitioner's Exhibit Number 26 marked for identification.

(The document referred to was [25] marked for identification as Petitioner's Exhibit No. 26.)

BY MR. DOAN:

Q. Mr. Snow, I hand you this document and ask that you briefly describe what it is.

THE COURT: Is that also a copy of a patent for this so-called telephone answering device?

MR. DOAN: Yes, Your Honor.

THE COURT: Then that's sufficient.

MR. JANSEN: We have no objection.

THE COURT: Are you offering it?

MR. DOAN: Yes, Your Honor.

THE COURT: The document referred to will be received in evidence as Petitioner's Exhibit No. 26.

(The document previously marked for identification as Petitioner's Exhibit No. 26 was received in evidence.)

BY MR. DOAN:

Q. Mr. Snow, at the time you became involved in Echo Development Company, were there any plans for commercially exploiting the telephone answering device?

A. Yes.

Q. And how did you propose to do that?

A. Based on evidence better confirmed by patent, it was felt this might be licensed to some manufacturer for manufacture and sale.

[26] Q. Did Echo Company hold this patent available for sale or licensing?

A. Yes.

Q. Mr. Snow, do you remember when that patent was applied for?

A. I'll have to refer to my notes. This is Currier, is it not?

A. No, Echo.

A. Patent applied for August 15, 1966.

Q. Mr. Snow, did the partnership Echo Development Company have a perfected model during 1966?

A. Yes.

Q. Was it a working model?

A. Yes.

Q. And did it function?

A. Yes.

MR. DOAN: Will you mark this please?

THE CLERK: Petitioner's Exhibit Number 27 marked for identification.

(The document referred to was marked for identification as Petitioner's Exhibit No. 27.)

BY MR. DOAN:

Q. Mr. Snow, will you briefly describe this document?

A. It is entitled "Echo Development Company, March 1, 1966 report."

[27] MR. DOAN: Your Honor, I offer into evidence the Echo Development Company 1966 report.

MR. JANSEN: Your Honor, we have no objection.

THE COURT: Document referred to will be received in evidence as Petitioner's Exhibit No. 27. Is that a financial report?

MR. DOAN: No, Your Honor, it is a progress report on the development.

THE COURT: All right.

(The document previously marked for identification as Petitioner's Exhibit No. 27 was received in evidence.)

MR. JANSEN: Excuse me, Your Honor, may I ask the date on that document?

MR. DOAN: March 3, 1966.

THE CLERK: March 1st.

THE WITNESS: March 1st.

BY MR. DOAN:

Q. Mr. Snow, you further stated earlier in your testimony that you were a member of a partnership known as Currier Enterprises.

A. Yes.

Q. Would you briefly describe the activities of Currier Enterprises?

THE COURT: Is that C-o-u-r-i-e-r?

MR. DOAN: Yes.

[28] THE WITNESS: Courier was engaged in the business of developing, inventing, patenting, and marketing an electronic device, in this instance a tape recorder.

BY MR. DOAN:

Q. Mr. Snow, was the partnership successful in obtaining a patent on the tape recording device?

A. Yes.

Q. Was the partnership actively pursuing this venture during the taxable year 1966?

A. To my recollection, yes.

Q. Mr. Snow, do you remember when the partnership Courier Enterprises was formed?

A. Yes, in March 1965.

MR. DOAN: Will you mark this.

THE CLERK: Petitioner's Exhibit Number 28 marked for identification.

(The document referred to was marked for identification as Petitioner's Exhibit No. 28.)

BY MR. DOAN:

Q Mr. Snow, will you briefly describe this document to the Court?

A. I assume this is a patent, isn't it?

Q. Yes.

A. I'm not familiar with these things. It is called Endless Tape Recorder and cartridge filed November 22, 1967.

[29] MR. DOAN: Your Honor, I offer the letters patent on the tape recording device in evidence.

MR. JANSEN: No objection.

THE COURT: The document referred to will be received in evidence as Petitioner's Exhibit 28.

(The document previously marked for identification as Petitioner's Exhibit No. 28 was received in evidence.)

BY MR. DOAN:

Q. Mr. Snow, did you personally participate in the management development of Burns Investment Company, Courier and Echo Development?

A. Yes.

Q. What was the purpose of having these separate partnership entities?

A. It was two fold in order of importance. First, different individuals and potential partners and investors might have a different appraisal of the particular profit opportunity offered by the individual prices, so in order to form a partnership it was better to keep them separate. It I liked one and somebody else didn't like it, an investor didn't have to take all three at once. I selected the ones that had the best profit opportunity for me in my judgment. And the second reason is that if the form of market-

ing took that of licensing to another manufacturer, the manufacturer of a tape recorder might be a quite different person than the manufactur- [30] er of an incinerator, and it gave us some flexibility in making these approaches.

Q. Now, Mr. Snow, you mentioned that Mr. Trott was the managing partner, I believe.

A. Yes.

THE COURT: Of which one?

THE WITNESS: Of all three, sir.

BY MR. DOAN:

Q. Mr. Trott was the managing partner of all three partnerships?

A. Yes, sir.

Q. How long have you known Mr. Trott?

A. Well, for approximately thirty years.

Q. Have you had an occasion to work with Mr. Trott?

A. Yes, he was one of my associates at Procter Gamble.

Q. And you were, were you then familiar with Mr. Trott's business activities?

A. As far as I could at that time, we were involved in Procter and Gamble and I was quite familiar with them, yes.

Q. Did you have any other business ventures in which you and Mr. Trott jointly participated?

A. Not prior to the time that Mr. Trott left Procter and Gamble to form his own business partnerships.

Q. Mr. Snow, did you become a partner in Burns Investment Company, Courier Enterprises and Echo Development Company [31] for the purpose of realizing a profit on your activities?

A. Certainly.

Q. Did any of the partnerships that I have just mentioned have a product or service which it held available for sale during the year in question, 1966?

A. According to my recollection all of them did with the exception, and I believe I answered this question earlier, at least in my personal judgment the original crude prototype model of the incinerator Trashaway was not then ready for sale.

MR. JANSEN: Your Honor, I'm sorry, I did not hear the last part of the answer.

THE WITNESS: Could you repeat the answer?

(Answer read.)

BY MR. DOAN:

Q. Mr. Snow, did you consider yourself to be involved in the trade or business of inventing, developing new products by virtue of your activities in these partnerships?

A. Yes.

MR. DOAN: I have no further questions.

THE COURT: Cross examine.

CROSS EXAMINATION

MR. JANSEN: Your Honor, would it be possible for me to use the podium? Could we position the witness at this table?

THE COURT: He's going to be facing you most of the [32] time. I think we'll keep the arrangement we have.

THE WITNESS: Could I stand here?

THE COURT: Let me determine where you are going to stand or sit. You stand there at that podium and answer his questions. It's inconvenient to try a case in this Courtroom without a witness stand and not being able to see the Clerk, the Reporter or the witness. This is the best we can do under the circumstances.

BY MR. JANSEN:

Q. Now, Mr. Snow, you have indicated you have been

employed with Procter and Gamble since about 1933. I assume this has been a full time position since 1933, is that correct?

A. I have been employed by the company during that entire interval, yes.

Q. In other words you had been employed on a forty hour work week basis regularly for that period of time?

A. I don't punch the clock, but it's at least that.

Q. Would you say as a rule you put in forty hours a week?

A. Yes.

Q. More than forty hours a week?

A. Yes.

Q. Fifty hours a week?

A. Probably.

Q. Sixty hours a week?

[33] A. I doubt it.

Q. Fifty-five hours a week?

THE COURT: Well, let's say as an executive he puts in at least forty hours a week or more. I think your position has been more or less that of an executive of Procter and Gamble, most of that time certainly during the years involved in this case.

THE WITNESS: Yes.

THE COURT: You are still so employed.

THE WITNESS: Yes.

BY MR. JANSEN:

Q. Are you required to travel in your position?

A. To some extent.

Q. To what extent?

A. In recent years very little, perhaps two or three trips a year. Earlier I had different functions with the company where it involved a great deal of travel.

Q. When you say recent years you mean the last three years?

A. Three to five years.

Q. Prior to this recent period you had to do a great deal of traveling; in terms of days, ten days, fifteen days a month, what is it?

A. More like four or five days a month.

Q. What is your educational background, Mr. Snow? Do [34] you have a college degree?

A. Yes, I was a graduate of Stanford University and Harvard Graduate School of Business.

Q. And your prior background is in the business area, Bachelor of Arts and Business, Bachelor of Science and Business Administration?

A. I'm not sure I understand the question.

Q. What degrees do you hold, Mr. Snow?

A. Bachelor of Arts and Economics, Stanford, Master's Degree in Business Administration at Harvard.

Q. Have you during the college days, did you take any courses dealing with engineering?

A. No, sir.

Q. In your own name, Mr. Snow, have you ever filed an application for a patent?

A. No.

Q. You have no patents ever issued to you?

A. No.

Q. You have indicated on direct examination that you have known Mr. Trott for approximately thirty years. Did you know Mr. Trott prior to the time you became employed with Procter and Gamble?

A. No.

Q. You then met Mr. Trott through your association with Procter and Gamble?

[35] A. Specifically Mr. Trott joined the company after I was already employed there.

Q. And have you spent the majority of your services with P and G in Cincinnati?

A. Yes.

Q. And Mr. Trott, I assume, has done the same thing?

A. No. There was a period, resident of Cincinnati, yes, and also a resident outside of the country because for a period he was employed in the International Divisions, including one job as manager of our business in Mexico.

Q. Did you have over the period of years a social relationship with Mr. Trott?

A. Yes.

Q. To what extent was there a social relationship?

MR. DOAN: Objection, Your Honor.

THE COURT: I'll sustain the objection. I don't see the relevance.

BY MR. JANSEN:

Q. Are you related by marriage to Mr. Trott?

A. No.

Q. Do you have a daughter or son that's married to —

MR. DOAN: Objection, Your Honor, I see no relevancy.

THE COURT: What was the question, do you have a daughter or son, what? Read the question, Miss Reporter.

(Question read.)

[36] THE COURT: Do you want to complete your question?

BY MR. JANSEN:

Q. Mr. Snow, do you have a son or daughter who was married to one of Mr. Trott's sons or daughters?

MR. DOAN: Objection, Your Honor.

THE COURT: Sustain the objection unless you can point out to me some possible relevancy of a question of that character.

MR. JANSEN: Your Honor, we'll go to the next question.

Q. Mr. Snow, let's discuss a little bit, if you can, your activity with this Burns Investment Company prior to the time of the formation of the partnership, in other words prior to July of 1965. Were you aware that Mr. Trott was working on this Trash burner concept?

A. Yes.

Q. And how were you made aware of that fact?

A. Through discussion with him.

Q. And where did those discussions take place as a rule?

A. As a rule I would say in his home.

Q. And what was the occasion of your being present at Mr. Trott's home?

MR. DOAN: Objection, Your Honor.

THE COURT: What is the relevancy of that question? Tell me what you're driving at. Maybe I'll understand it.

[37] MR. JANSEN: Your Honor, the issue involved in this case is in determining if there was an existing trade or business in the year 1966 with respect to the Burns Investment Company. Mr. Snow was a full time executive with Procter and Gamble, he spent many hours with that company.

THE COURT: Now isn't it a question of whether or not he is engaged in a trade or business, I gathered from the opening statements, whether he is engaged in a trade or business of inventing and developing patents.

MR. JANSEN: Your Honor, that is true. The issue does relate to Mr. Snow personally, but it also relates to the

partnership entity Burns Investment Company. Were they an existing trade or business in 1966, and it is Respondent's position that they were not.

THE COURT: You mean that the partnership was not in existence at that time?

MR. JANSEN: No, Your Honor, we acknowledge the existence of the partnership but we don't believe that they were an existing trade or business from the standpoint that they were a going trade or business.

THE COURT: I'll sustain the objection.

BY MR. JANSEN:

Q. Mr. Snow, you have indicated that you were aware of the existence of this product concept that Mr. Trott was developing at this time. Did you actually perform any services [38] with Mr. Trott prior to the formation of the partnership in developing this product concept?

A. I would answer that by saying depending on your definition of service. I was familiar with the concept, I had a good deal of confidence in it, I saw the crude prototype model demonstrated on a number of occasions, and participated in initial thinking with regard to how the product might eventually be marketed, sold, trade-marked and so forth.

THE COURT: May I interrupt and see if I can shorten this a little bit. Was Mr. Trott an inventor?

THE WITNESS: Yes.

THE COURT: Did he invent this from the mechanical standpoint?

THE WITNESS: Yes.

THE COURT: This Trashaway or incinerator, he's the one who invented it.

THE WITNESS: Yes.

THE COURT: And you knew he was working on it.

THE WITNESS: I certainly did.

THE COURT: Before you became a limited partner, I believe, in the Burns Investment Company.

THE WITNESS: Correct.

THE COURT: And you had discussions with Mr. Trott about what he was doing, which eventually led you into entering into partnership with him.

[39] THE WITNESS: Yes.

THE COURT: For the purpose of putting it on the market so as to be able to sell it, complete the development, sell it and make a profit.

THE WITNESS: Hopefully make a profit.

THE COURT: What more do you need?

MR. JANSEN: Your Honor, we'll turn to a different area of questioning.

THE COURT: Behind all that whatever the partnerships were in, is the principal question as far as Mr. Snow is concerned whether he was in a trade or business of this character.

BY MR. JANSEN:

Q. That's right, Your Honor. Mr. Snow —

THE COURT: I think it's a little more simple than you're trying to make it, both of you.

BY MR. JANSEN:

Q. Mr. Snow, I hand you what has been marked for identification purposes as Joint Exhibit 1-A which is, this is actually your Federal income tax return for the year 1966. Schedule C of that return at item A at the top, would you read Item A of the tax return.

THE COURT: Well, ask him your question. The exhibit is in evidence. What is it you're trying to develop?

MR. JANSEN: Item A reads principal business [40] activity, "thoroughbred race horse operation."

MR. DOAN: Your Honor, I object. That has nothing to do with the case.

THE COURT: He is pointing out what is contained in an exhibit you jointly filed in this case. This is Exhibit 1-A.

MR. JANSEN: It is Schedule C. I don't believe the pages are numbered. It is the first Schedule C shown on the return.

THE COURT: The return speaks for itself. You're asking him what it shows on there.

BY MR. JANSEN:

Q. Mr. Snow, how many hours during the year 1966 did you devote to this business?

A. Which business.

Q. Item A as indicated on this Schedule C, thorough bred race horse operation?

THE COURT: Just a moment, I'm evidently looking at a different one than you are.

MR. DOAN: Your Honor, it is the second Schedule C in the tax return.

MR. JANSEN: Unfortunately, Your Honor, the pages are not marked or numbered.

THE COURT: Apparently there is more than one Schedule C attached and you're looking at one of them. All [41] right, go ahead and ask your question. The exhibit shows on that particular Schedule C in answer to principal business activity "Thoroughbred Race Horse Operation." Another one over there refers to similar question as oil operator, M G O Stone Oil Company. I don't know whether there are any more in here or not. It's in the record.

BY MR. JANSEN:

Q. The question is with respect to the thorough bred

race horse operation, how many hours per week or month did you devote to that business, Mr. Snow, during the year 1966?

A. Well, that would be difficult if not impossible to estimate.

Q. Would you try to make an estimate? Would you say two hours a week, or what exactly –

A. I think that would – (nodded)

MR. DOAN: I object to the relevancy of the question.

THE COURT: The question is how much time he spent in the business of the thorough bred race horse operation. Can you give any estimate?

THE WITNESS: As I say it would be difficult to estimate, but my best judgment would be three or four hours a week on the average, throughout the year. It's different from time to time.

BY MR. JANSEN:

Q. That's approximately twelve hours a month then?

[42] A. Well, that's my best recollection.

Q. All right. Now, Mr. Snow with respect to the other Schedule C, the Stone Oil Company. Did you devote any time to the operation of that business in 1966?

A. Yes.

Q. Approximately how much time on a per week or per, let's make it on a per week basis.

A. In this instance I would estimate approximately an hour a week.

Q. So with respect to both of these additional businesses, Mr. Snow, you have estimated that you would devote approximately fifteen hours per month, in that correct.

A. If those add up in that fashion, yes.

Q. Now, Mr. Snow, directing your remarks to the Echo Development Company which of course you joined

the partnership in 1965. Approximately how many hours on a per week basis did you devote to that partnership in 1966?

A. I don't recall.

Q. Did you devote any hours to Echo Development Company in the year 1966?

A. Certainly.

Q. Could you estimate approximately how many?

A. It would be very difficult because at that time, working with various partners and Mr. Trott, we had many discussions, most of them after P and G hours, on the prospects [43] of these inventions and these devices.

Q. Well, would you say, if you had many discussions, Mr. Snow, would you say on an average, couldn't you give us an average as to approximately how much time was devoted to this business?

A. Which business?

Q. Echo Development Company.

A. Possibly an hour a week.

Q. One hour a week, approximately four hours a month?

A. Hmm hmm.

Q. With respect to Courier Enterprises, of which you were a partner in 1966, approximately how many hours per week did you devote to that operation?

A. I'd say perhaps an hour. That's the best off hand judgment. This is almost impossible to allocate your time twenty-four hours a day.

Q. I understand that you're approximating. Finally Burns Investment came into existence during July of 1966, tax returns which have been stipulated indicate that business was commenced on August 1 of 1966; between August 1 of 1966 and December 31, 1966, approximately how many

hours per week did you devote to Burns Development Company?

A. I can't recall.

Q. Would you say that the number is similar to the number of hours spent on Echo and Courier?

[44] A. Similar but I absolutely cannot recall.

Q. Approximately.

A. Even approximately is very difficult. You must understand that.

Q. You have indicated, Mr. Snow, that you did spend approximately one hour per week with respect to each one of these partnerships. How was that time spent?

A. The time was spent primarily in discussions with Mr. Trott with reference to each of the inventions and enterprises and prospects, the way it should ultimately be marketed and at times in watching demonstrations of these devices.

Q. Were these formal meetings called by Mr. Trott and yourself?

A. In some instances.

Q. How were the meetings called? Were all the partners present?

A. In some instances, yes. In others, no.

Q. Was there a written piece of correspondence which summoned all the partners together for a formal business meeting?

A. I can not recall. My recollection is that we met several times on the basis of telephone conversations.

Q. Where were the meetings held, Mr. Snow?

A. Some of them were held in the offices of Cross Bow which was earlier referred to. That's a corporation in which [45] Mr. Trott is involved.

THE COURT: We'll recess for lunch until two o'clock.

(Whereupon, at 12:30 p.m. a recess was taken until 2:00 o'clock p.m.)

[46] AFTERNOON SESSION 2:00 p.m.

THE COURT: Are you ready to proceed?

MR. JANSEN: Yes, Your Honor.

THE COURT: All right, Mr. Snow, do you want to come back to the witness stand? And it is a witness stand.

CROSS EXAMINATION (cont'd.)

BY MR. JANSEN:

Q. Now, Mr. Snow, before we broke for lunch we were discussing the amount of time you spent with Burns and Echo and Courier and this line of questioning. Now to pick up this afternoon, on direct examination this morning, you indicated that one of your activities with Burns Investment Company was to counsel on the development of the product. It that a proper restatement of your testimony this morning?

A. Yes, one of them.

Q. How exactly did you counsel on the development of the product?

A. The original prototype which embodied the basis of the path or the mechanical way of putting air into this thing to get stronger combustion to my mind was housed in something that was unwieldy, not as portable as it should be, not as attractive as it should be, so I was one among others who felt the design could be improved and would be more marketable or we'd sell more or make more profit out of it if some further refinements in design were made, and I had some specific [47] suggestions along the directions I thought this should take in view of my own concern.

Q. Do you recall when the suggestions were made with respect to this particular innovation in the design?

A. Not specifically, but I would judge it was over a period of time as the design developed. It might readily have started in late '65 as a matter of fact, at which time there was a prototype device.

Q. As I interpret your response to that question, this is one innovation that you have recommended in regard to this trash burner?

A. Yes.

Q. Can you give us some examples of other innovations you may have suggested?

THE COURT: Let me ask one question. Were these suggestions of yours, did they mainly have to do with the looks of it, or did they have anything whatsoever to do with the mechanical operation of it? Was it to make it more attractive looking to a purchaser?

THE WITNESS: Primarily, yes.

THE COURT: Why do you need to go so far into that?

MR. JANSEN: Your Honor, we're going to get away from that area in just a moment.

Q. Mr. Snow, this morning there was admitted into evidence a letter dated December 10, 1965 which was addressed [48] to Mr. Trott, which you identified the contents of as coming from Mr. Konold who was a patent attorney. This is Petitioner's Exhibit number 24.

A. Yes, sir.

Q. Mind you, Mr. Snow, this letter is dated December 10, 1965. Are you familiar basically with the contents of this letter?

A. Yes.

Q. I notice in here that there are various suggestions made as to how improvements can be made on this design

product concept of Mr. Trott's. Were these improvements subsequently made to the trash burner?

A. I can't answer that precisely because I frankly have not read that letter for four or five years. So the ones specifically mentioned by the attorneys I cannot be sure they were followed or to what degree they were followed.

Q. Also this morning, Mr. Snow, you mentioned that you were active in the marketing of the Burns Development Company product. Can you recall what marketing efforts you expended in 1966 in regard to the Burns product?

A. In a general way, yes, and here I might do a little volunteering. I feel with thirty years with P and G experience primarily in marketing, I have faced marketing problems on scores of products, many hundreds of kinds, and you face a little expertise here, if you will. This could be sold through [49] agents, distributors, it could be sold through direct mail, through television advertising, many, many different ways in which there was advertising and marketing, and Mr. Trott and I had many, many conversations as to the probable direction in which we should go or at least should test various ways and try to find out how muct it cost in relation to the return we got to find the best way of putting it to market.

Q. Specifically then, getting back to my original question, what efforts did you expend in the marketing field with respect to Burns' product in 1966?

A. I would answer a great deal, but I cannot put it in terms of time. Some times you can see a problem and see a solution rather rapidly, and other times wake up in the morning with an idea. You were questioning me earlier about how much time I put in. I'd say a great part of my time was not spent in meetings as such but thinking about the over all problem and trying to get some points ot view.

Q. Mr. Snow, keeping this area of examination in your mind, with respect to the Burns venture, this morning you mentioned that Mr. Trott's concept of this trash burner was a unique idea.

A. Yes.

Q. Do you recall that?

A. Yes, indeed. I depended on it.

Q. With respect to Burns, at the time of the formation [50] of this partnership in July of 1965, were you aware of any guarantees made by any party that a patentable product would subsequently result from the research and development work done by Cross Bow Inc.?

A. May I ask you to check your date? I think it was July 1966.

Q. Right, did I say '65? It was July 1966.

A. Now may I have the question again?

Q. Sure. With respect to Burns Development Company at the time of the formation of this partnership in July of 1966, were you aware of any guarantees which were made by any party that the ultimate effect of the research and development work performed by Cross Bow would lead to a patented product?

A. For myself I had strong assurances from that letter to which we just referred, from patent counsel, I believe it was dated December 10, 1965?

Q. Now, Mr. Snow, I mentioned the word guarantees. Did anybody tell you this product would ultimately be patentable?

A. Well, they could not, let me say that that letter and subsequent conversations with more than one partner of that law firm and with independent people led me to believe rather strongly that their opinion was correct. I'm not an expert in patentability, I had to rely on counsel.

Q. I understand that. In July of 1966 then, at the time

you made your initial investment in the partnership, did [51] you feel that there was some risk involved?

A. Yes.

Q. Definitely. So then the venture itself was speculative in nature?

A. Yes.

Q. Mr. Snow, this morning also you mentioned that in 1966 and I may have misinterpreted your response, that Burns was involved in a manufacturing process in 1966. Let me ask you the question this way, to your knowledge was Burns Development Company involved in any manufacturing of any product in the year 1966?

A. Yes, but I'm repeating that to the best of my recollection they were largely assembling components that were made by other manufacturers along with manufacturing some themselves. It was not the full manufacturing and delivery of a unit by someone else to the Burns Corporation.

Q. Where was this assembly taking place?

A. In the building that's occupied by the Cross Bow, Inc.

Q. Were those Burns employees that were doing the assembling?

A. Some of them may have been, but my recollection is that Cross Bow undertook to do a lot of this based on an understanding as to how much of the cost of an individual would be charged to Burns and how much to some of the other things they [52] might have been doing.

Q. This morning –

A. May I mention here –

Q. Sure.

A. Some of the same people might have been involved in work on Echo Development to which we referred earlier, and there had to be some agreement as to how much time

would be allocated to the various partnerships and enterprises.

Q. To your knowledge, Mr. Snow, in 1965 at the time the Echo Development Company, the partnership came into existence, was the product of Echo marketable at that time?

A. Yes.

Q. In 1965 at the time of the formation of the partnership the Echo product was marketable?

A. Yes.

Q. What efforts did you expend in 1965 in marketing that product?

A. I counseled with Mr. Trott and others on a number of occasions as to how it should best be marketed and we concluded in this instance by trying to interest another manufacturer in licensing. We then had a patent applied for our product in undertaking its manufacture and sale on a royalty basis.

Q. Did you contact third persons in regard to that?

A. I did not personally.

[53] Q. Were you charged with the marketing efforts with respect to Echo?

A. No, Mr. Trott was principally making the contacts and several of us, I think quite importantly were talking with him from time to time about the results and directing his attention to potential customers.

Q. With respect to Courier in the year 1965 at the time of that formation, the formation of that partnership, was that product marketable?

A. Could I cut through this by saying I think Echo and Courier were in the same situation.

Q. Did you personally make any contacts with respect to marketing that product with respect to Courier?

A. No, sir.

Q. Mr. Snow, we have stipulated in this case the 1965, 1966 and 1967 partnership returns of Echo Development Company and Courier Enterprises. On none of those returns are there any sales reported and I assume no sales were ever made during those years?

A. That is true.

Q. Why were no sales made?

A. Because the product itself was never offered for sale to my knowledge. The marketing effort there and the best judgment of all of us we should attempt to market the device and the patent in terms of getting another manufacturer to [54] take it on on a licensing basis and undertake its manufacture and market.

Q. With respect to that effort, what efforts did you expend in contacting other manufacturers?

A. I personally as I mentioned before did not contact anyone.

Q. Mr. Snow, directing your attention to the Burns Investment Company only, to the best of your knowledge do you know if at any time subsequent to the year 1966 serious consideration was given to abandoning that project?

A. I can only speak for myself and just say that I have had and continue to have great confidence, and I'd like to own more of it.

Q. The question is do you know if serious consideration was given by yourself personally or by the partnership as a whole to abandoning that project?

A. Not to my recollection, no. There might have been some partner that might have had some misgivings about it.

MR. JANSEN: Your Honor, that's all the questions I have.

THE COURT: Any further questions on redirect?

MR. DOAN: Your Honor, may I ask Mr. Snow just two questions.

REDIRECT EXAMINATION

BY MR. DOAN:

[55] Q. Mr. Snow, you testified that you spent perhaps one hour per week per venture, on Echo, Courier and Burns. Now, did you mean you spent that much time, was that the total effort you exdended on these projects?

A. By no means, no. If I answered it in that fashion, I can't recollect how much time I spent twenty-four hours a day five or six years ago. I spent that amount of time actually in discussion, in meetings, on the telephone or otherwise, with Mr. Trott, but I was thinking of the problem for many odd hours as one does in developing a business.

Q. You stated that your area of activity was primarily concerned with the design, trade mark and the marketing effort. In your opinion is this the type of activity that you spend time just thinking about it as opposed to the time you would spend in actual discussion with for example Mr. Trott.

A. As I understand your question there is a great deal of time and effort, if you call thinking about something effort, when you're not actually talking with someone or discussing it with someone.

Q. And it is your testimony you did spend a great deal of time in that activity, that is mental activity?

A. I'm saying considerable time. I don't know –

Q. And that time was devoted to these three projects?

A. Yes, sir.

MR. DOAN: No further questions.

[56] THE COURT: You may stand aside. Call your next witness.

(Witness excused.)

MR. DOAN: We have no further witnesses for Petitioner, Your Honor.

MR. JANSEN: Your Honor, Respondent would like to call Mr. David H. Trott.

David H. Trott

was called as a witness on behalf of the Respondent, and, having been first duly sworn, testified as follows:

THE CLERK: State your name and address for the record.

THE WITNESS: David H. Trott, 2444 Madison Road, Cincinnati, 45208.

DIRECT EXAMINATION

BY MR. JANSEN:

Q. Mr. Trott, were you at one time employed by Procter and Gamble?

A. Yes, I was.

Q. Are you still employed by Procter and Gamble?

A. No.

Q. Are you retired from Procter and Gamble?

A. I resigned.

Q. What year did that resignation take effect?

A. 1963.

[57] Q. Prior to 1963 about how long did you work for Procter and Gamble?

A. Twenty-two and a half years.

Q. And as briefly as possible, during that period in what areas were your efforts expended?

A. The areas I was active in were advertising, marketing on a somewhat broader basis, and general management.

Q. During that period of time were you associated with Mr. Snow?

A. Yes, I was.

Q. And exactly what was that association?

A. He was my first superior when I went to work at Procter and Gamble in 1942. During my years there I would say he was my superior for a longer cumulative time than any other person in Procter and Gamble.

Q. Can you explain very briefly the levels of your development within Procter and Gamble, did you hold title positions?

A. Yes, my first job in Cincinnati after finishing sales training was as a copy supervisor in charge of development of advertising copy. I was then a product manager or a brand manager. I was subsequently an associate brand promotion manager. I was then Vice President and General Manager of Procter and Gamble in Mexico and I returned to the United States and was Advertising Manager for the International [58] Division, a job I held on my resignation.

Q. So in essence your efforts expended for P and G were in the area of marketing as were Mr. Snow's?

A. And management.

Q. What college degrees do you hold?

A. Liberal Arts, B.A.

Q. You hold no degrees in engineering or science?

A. No, sir.

Q. Prior to the year 1965 have you ever had any other business ventures with Mr. Snow?

A. Not on any formal basis, no.

Q. I assume then on an informal basis there was some type of business venture?

A. I guess the answer to that has to be no, there were no ventures, although Mr. Snow was at all times pretty conversant with what I was up to.

Q. Directing your attention only to the Burns Investment Company and the trash burner project, when did the idea, or was the idea yours for the trash burner?

A. Yes.

Q. At what point in time did that idea come, I guess you created the idea?

A. Let me answer this way. The identification of what I thought was the problem and the need occurred in late '63, shortly before I resigned from Procter and Gamble. The idea [59] concerning what to do about that problem, the problem being the disposal of leaves and trash, the first idea what to do about that problem did not occur until 1964. The final, what we hoped would be the final resolution of the problem occurred in 1966.

Q. Approximately how much time between 1964 and 1966 at the time of the coming into existence of the partnership Burns Investment Company, how much time did you devote to the development of that project personally?

A. Between '64 and '66?

Q. Right. On a weekly basis or a monthly basis that you could give the Court an estimate?

A. I would say during that time at least a third of my time was devoted to it.

Q. And during that same period you were still employed with Procter and Gamble.

A. No, I resigned from Procter and Gamble in 1963.

THE COURT: When did you say the idea for this incinerator occurred to you?

THE WITNESS: The concept that there ought to be an incinerator for the purpose of disposing of leaves and trash occurred to me in '63, at which time I was still employed by Procter and Gamble.

THE COURT: All right.

BY MR. JANSEN:

[60] Q. Now, Mr. Trott, between 1964 and July of 1966, would you estimate the amount of expense you incurred in developing this idea?

A. I don't know.

Q. Now, involved in this matter today, Mr. Trott, we have three partnerships, Echo, Courier and Burns Investment Company of which you are a partner of all three. Was this identifying the product concept and then the subsequent development on your own and the partnership coming into existence, was this general procedure followed in each instance?

A. With the exception of Echo.

Q. How did that differ?

A. Echo was a project which in a sense I inherited when I first became involved in Cross Bow. It was a project then in existence which had been carried on to a certain stage of development by the prior owners of Cross Bow. Burns on the other hand, and Courier, were products in which I was solely involved at the inception.

Q. Now, with respect to Burns Development and the trash burner, can you describe for the Court essentially the stage of development of that trash burner in January of 1966 or in the early part of 1966?

A. We had built a number of experimental models prior to that time with varying degrees of success. We had at that time to the best of my recollection a model and pretty clear [61] cut specific ideas about how to bring that model to a state of commercial and practical effectiveness. We also had the opinion of the patent attorney which has been identified here before that we had a pretty good patent position.

Q. Now, Mr. Trott, Petitioner's Exhibit No. 23 which is dated February 22, 1966, and is a letter addressed to you

and signed by Mr. Konold, seems to indicate that there was more than one type of a burner involved.

A. Hmm hmm.

Q. Was there what is called an institutional type trash burner?

A. At that time?

Q. Yes.

A. Yes.

Q. Was that the only burner?

A. No.

Q. In January of 1966?

A. (Shook head.)

Q. The letter refers to two models, Mr. Trott, could you distinguish between the two models.

A. I preface that by saying to the best of my recollection, I think we must have had twenty-six or twenty-seven models. The two referred to I believe are one which was built around a garden tractor and which used as its power source the motor of the tractor. The other one was a wheel-about inciner- [62] ator which had its own independent power source.

Q. With respect to both of those models, were they aimed primarily at the industrial market?

A. No.

Q. I notice in the letter, Mr. Trott, that at paragraph two of page two it is indicated that the two models of the leaf burner are big institutional type devices and an objective is to make a smaller leaf burner which will be salable to the individual home owners. Do you get the impression from reading that letter that at that time there did not exist a smaller model which was saleable to the home owner?

A. I think it would be speculative to say that without actually having tried to sell a particular model.

Q. Mr. Trott, prior to the time that this letter was sent to you, did Mr. Konold observe any demonstrations of your trash burner?

A. I believe so but I can't be sure.

Q. The last sentence of paragraph one of this letter indicates "this opinion is based on my examination of the leaf burner and my discussion with you of the tests which you have made on them" which would seem to indicate he did observe the two institutional models he referred to in this letter.

A. I thought in your questioning you were referring to prior to this.

Q. That was my question, yes.

[63] A. Prior, yes.

Q. Where did these demonstrations take place?

A. At Cross Bow.

Q. Mr. Trott, now bearing in mind the nature of the models as they existed in approximately the early part of December 1966, would you draw a contrast between that model and the patented model?

A. From the standpoint of design, mechanical operation?

Q. Over all, right, from the standpoint of design, exterior design.

A. Well, the basic difference between the two in terms of operation again as I recall those models at that time is this, they had two air inlets, one at the bottom and one at the top of the burning chamber. Both air sources derived from the same blower. The model as it now exists has a single opening at the top of the chamber and none at the bottom of the chamber.

Q. In terms of the type of drum, the burning unit itself, how large was the unit that was used in 1966?

A. Somewhat larger than the present one which utilizes a fifty-five gallon drum.

Q. When you say somewhat larger, would you say seventy gallons, a hundred gallon drum?

A. I would estimate 70 gallon, 65 to 70.

Q. The partnership agreement, the Burns Investment [64] Company partnership agreement, Mr. Trott, is dated July 8, 1966. What efforts did you expend prior to that date with respect to third parties to raise capital to be used in the development of the trash burner?

A. I gave the partners who had joined with me in Courier a synopsis of the project, described it to them, asked if they were interested in the project, and that was all.

Q. So what you're saying is that the only parties who were contacted were partners in another of your ventures?

A. That's right.

Q. Mr. Trott, why was the partnership formed in 1966?

A. To form a legal vehicle for this particular venture.

Q. Was it also formed in order to raise capital in order to continue the development of this project?

A. Yes.

Q. What is your present association with Cross Bow, Inc.?

A. I'm President and sole owner.

Q. And when did that association begin?

A. It began, I believe, in 1964 when I bought a twenty-five percent interest. I gradually increased that until I took over sole ownership I believe in December of 1965.

Q. So that in the year 1965 at the time both Echo and Courier entered into agreements with Cross Bow you owned approximately twenty-five percent interest in Cross Bow?

A. Twenty-five to fifty.

[65] Q. And then subsequently in the year 1966 an agreement was reachet with Burns and you still owned twenty-five —

A. A hundred percent.

Q. You owned a hundred percent in 1966?

A. Yes.

Q. From whom did you buy the stock of Cross Bow?

A. From Robert Boggild and William Dale.

Q. Is the Robert Boggild the same individual who was a partner in both Echo and Courier?

A. Right.

Q. Now, Mr. Trott, can you give us an example of, in the year 1966, of the type of services or products that were sold by Cross Bow, Inc.

A. Yes, in 1966 our commercial activities apart from product development which was our primary activity consisted of making and selling a novelty item under the trade name Drinklight, and doing job shop work for customers in the fabricating and machining business.

Q. I see. Was that Cross Bow's sole product in 1966, the Drinklight?

A. It was the sole product manufactured in volume.

Q. Were other products manufactured?

A. We made other products for other people, but none of them in mass production.

Q. I see. Does Cross Bow itself have a manufacturing [66] plant?

A. Yes.

Q. Which is located where?

A. 5240 Worcester Road.

Q. Is that the same location where Cross Bow was located in 1966?

A. No, it is not.

Q. What was the address in '66?

A. It was Blue Ash Road, I don't recall the exact street address.

Q. How does 8120 sound?

A. There were two places on Blue Ash Road, that's why I couldn't remember.

Q. Does 8120 sound like the correct address?

A. Yes.

Q. Do you presently draw a salary from Cross Bow?

A. Yes.

Q. Did you draw a salary in 1966?

A. No.

Q. During the year 1966 did Cross Bow enter into a contractual agreement with Burns Investment Company?

A. Not any written agreement that we were able to determine. There was an oral understanding, an understanding within the partnership that the work done on behalf of Burns Investment would be done more or less on the same basis we had [67] been doing work for Courier and Echo in which case there was a written contractual agreement.

Q. Now, Mr. Trott, have you searched your records with respect to Burns Investment to determine if you could locate a written contract between Burns and Cross Bow, Inc.?

A. Yes.

Q. And you have also checked Cross Bow's records and you could locate no written contract?

A. The answer is no.

MR. JANSEN: I'm sorry, could you repeat that question again?

(Question read.)

THE WITNESS: Yes.

BY MR. JANSEN: Would you mark this.

THE CLERK: Respondent's Exhibit W marked for identification.

(The document referred to was marked for identification as Respondent's Exhibit W.)

BY MR. JANSEN:

Q. Mr. Trott, I hand you what has been marked for identification as Respondent's Exhibit W. Can you identify that document?

A. This is a letter from D. H. Trott to Robert Boggild dated April 28, 1965, the subject of which –

Q. That's enough. The D. H. Trott whose signature [68] appears on that letter is one and the same D. H. Trott that is here today, is that right? That's you.

A. Right.

Q. Now, Mr. Trott, this letter, does this represent the understanding that existed between Cross Bow and Courier Enterprises with respect to the work that Cross Bow was to do for Courier?

A. Correct.

Q. Was there a similar letter which was also written by yourself with respect to the Echo Development Company concerning the services that Cross Bow was to render for Echo Development Company?

A. Right?

Q. Was that letter similar in nature to this one?

A. Yes.

Q. Now concerning the Burns Investment Company, as I understand your testimony you have indicated that you can not find a writing evidencing the understanding that existed between Burns and Cross Bow, is that correct?

A. Right.

Q. Are you sure, Mr. Trott, that there is no written contract evidencing any relationship, legal relationship between Cross Bow and Burns?

A. Not a hundred percent sure, no.

Q. You have diligently searched the files of Cross Bow [69] and Burns and there is no letter to be found.

MR. DOAN: Your Honor, I believe counsel is getting repetitious and he is also leading his witness.

THE COURT: If that's an objection, it's immaterial at this point. I'll let the testimony stand. Avoid leading and avoid repeating.

MR. JANSEN: Yes, Your Honor.

Q. Mr. Trott, do you have personal knowledge of the understanding that existed between Burns Investment Company and Cross Bow, Inc.?

A. Yes, I do.

Q. What is that understanding?

A. I believe it is expressed in the invoices which are a part of the record here, which consisted of a series of hourly rates similar tothe Echo and Courier arrangement for different types of work.

Q. Mr. Trott, I notice at Exhibit 2-B which is a copy of the partnership agreement of Burns Investment Company, that it indicates that the purpose and business of the partnership shall be the development of a special purpose incinerator for the consumer and industrial markets. Now, this development procedure, is that what Cross Bow was doing for Burns Investment Company?

A. Yes.

Q. Did Burns Investment Company do any of that devolp- [70] ment work itself with respect to the product concept?

A. Yes. I as a partner in Burns Investment Company did most of it.

Q. Where did that development take place, Mr. Trott?

A. It took place at Cross Bow and in the field.

Q. Now, with respect to Burns Investment Company, where did that development take place?

A. At Cross Bow, Inc. out on Blue Ash Road and later, well, 66 Blue Ash Road, and it took place at my residence and in the neighborhood.

Q. Now, Mr. Trott, with respect to the year 1966, approximately what portion of the services rendered by Cross Bow, Inc. were apportioned to Burns Investment Company? Can you give us some idea?

A. I couldn't. I'd be flying blind.

Q. Okay. Other than Burns and Echo and Courier during the years 1965 and 1966, did Cross Bow have contracts with any other parties for doing similar type work?

A. Yes.

Q. Approximately how many contracts, do you have any idea?

A. During what period of time?

Q. 1965 and 1966.

A. It might have been as many as twenty-five different customers.

[71] Q. To your knowledge, Mr. Trott, at the time that Cross Bow entered into these contracts with the three partnerships, did Cross Bow make any type of a guarantee that their work would lead to a patent on any product?

A. No hard and fast guarantee, iron clad guarantee, no, but the probability was held out that we would get a patent in each case.

Q. So then with respect to each partnership there was a certain amount of speculation involved?

A. Correct.

Q. Now, Mr. Trott, with respect to Joint Exhibit 2-B, I notice that the principal office and place of business of Burns Investment Company was 8120 Blue Ash Road, that is Cross Bow's offices, is it not?

A. It was at that time.

Q. Now, could you describe for me basically the building facility itself at 8120 Blue Ash Road?

A. We had approximately five thousand square feet of space of which maybe on the main floor, of which maybe a thousand feet was devoted to office, design and drafting, and the rest to shop and manufacturing facilities. We had a basement which was probably around four thousand square feet.

Q. Now, what portion of that total nine thousand square feet was used by Burns Investment Company?

A. I can't answer that, I don't know. It varied, [72] depending on what we were doing at any given time.

Q. Why did it vary?

A. The project would be considerably more active, or likely to be during the fall than it was during the dead summer.

Q. When you refer to the project you're referring to the —

A. Incinerator.

Q. You're referring to the work being performed under the terms of the oral agreement, is that correct, and the individuals that were performing that work were Cross Bow employees, is that right?

A. Except for myself.

Q. Then I don't believe we can say that any space occupied by those employees occupied space of the Burns Development Company. I'm referring to the Burns Development Company offices and employees, what percentage of that total five thousand, nine thousand square feet was used by Burns Development Company employees?

A. If we consider me as an employee of Burns, perhaps five percent.

Q. Five percent comprising your office? And were you paid by the Burns Investment Company?

A. Not directly, no.

Q. Was your service which you performed billed to the [73] Burns Investment Company by Cross Bow, Inc?

A. Right.

Q. Therefore your compensation for services performed on the contract came from Cross Bow rather than from Burns, and therefore in essence we probably should eliminate your five percent space.

A. (No audible response.)

Q. Now, Mr. Trott, on the exterior of this building was there any sign identifying it as the offices of Burns Investment Company?

A. No.

Q. Did Burns Investment have a telephone in that building?

A. No.

Q. Were there to your knowledge any employees in that building who were compensated by Burns Investment Company directly?

A. There was a consulting electronics engineer who had space in that building and did some work for Burns and was compensated directly by Burns.

Q. Is the Burns Investment corporation also presently located at the Cross Bow, Inc. offices?

A. Yes.

Q. And those offices are now located on Worcester?

A. Right.

[74] Q. During the year 166, Mr. Trott, are you aware of any marketing efforts that were made by yourself, Mr. Snow, or any member of Burns Investment Company to market a product as such in the year 1966?

A. No.

Q. During the year 1966 were you aware of the Burns Investment Company having a manufacturing plant of its own?

A. Not per se, no.

Q. Were you aware or are you aware in the year 1966 of Burns Investment Company having any type of an office or manufacturing plant facility?

A. If you mean its own separate facilities —

Q. Right.

A. No.

Q. Now, Mr. Trott, we have stipulated that Joint Exhibits 5-E through 9-I, the invoices which were sent by Cross Bow to Burns Investment Company. I hand you what has been marked for identification purposes as Joint Exhibit 5-E which is invoice number 265 of Cross Bow, Inc. and I ask you, Mr. Trott, would you very briefly describe essentially the work which was performed by Cross Bow, Inc. on this or for the benefit of Burns Investment Company.

A. Well, as this invoice shows, it was comprised of shop time, designer time, and engineering time. The shop time was the skilled labor devoted to building models, working models [75] and prototypes of the incinerator, and the design and engineering time was work related to the design and engineering of those models.

Q. Now, with respect to the second item here, designers 318 hours, who performed that design work?

A. As I recall there were, I believe we had two designers on the payroll at that time.

Q. Of Cross Bow, Inc.

A. Right.

Q. With respect to the next item, who performed the engineering work?

A. That was largely Robert Boggild.

Q. Was that engineering work performed at Cross Bow, Inc?

A. Right.

Q. I notice on this invoice, Mr. Trott, it is marked paid down here. Do you know who made that notation?

A. Our bookkeeper, I imagine.

Q. Did you personally cause this invoice to be sent to Cross Bow, Inc., to Burns Investment?

A. To Burns, yes.

Q. Mr. Trott, the next exhibit which is Joint Exhibit 6-F indicates that there was shop work performed and engineering work performed also. Was that work also performed at Cross Bow, Inc?

[76] A. Yes.

Q. And did you personally cause this invoice to be sent to Burns Investment Company?

A. Probably, yes.

Q. I notice on this invoice, Mr. Trott, that there are some notations made at the bottom right hand corner with respect to the payments. Who do you think made those notations?

A. Our bookkeeper I would imagine.

Q. I notice the first date of payment is August 5, 1966.

A. Correct.

Q. This invoice is dated July 31, 1966 and the terms are net thirty days.

A. Right.

Q. Now precisely how was this payment transacted?

A. By check.

Q. Could we trace the invoice to the Burns Investment Company which caused payment to be made? In other words the invoice is made in Cross Bow, Inc.'s offices.

A. Right.

Q. Is it given to another individual who in turn causes a check to be issued to Cross Bow, Inc?

A. I issued the check.

Q. You issued the check.

[77] A. Or checks.

Q. The date of payment on this Cross Bow invoice, Mr. Trott, is August 5, 1966 and August 12, 1966. Was there generally that type of time lag between payments?

A. I don't recall. I don't recall the circumstances which led to that type of payment.

Q. Joint Exhibit 7-G, Mr. Trott, is the same type of invoice from Cross Bow, Inc. and it has design work, engineers' work, consultant work and miscellaneous materials. Was that work also performed at Cross Bow, Inc?

A. Yes, with the possible exception of that consultant work. I don't recall exactly what that was.

Q. Joint Exhibit 8-H, Mr. Trott, shows an invoice billing Burns for $12,500.00 for project management services. Who performed those services?

A. I did.

Q. That's a lot of money for management services. Could you elaborate upon your specific responsibilities in billing Burns Investment Company $12,500.00?

A. That was, that reflected the amount of work I personally put in actively managing the project.

Q. Extending from what date?

A. I don't recall.

Q. Was a portion of that billing attributable for management services performed prior to the time of the partnership?

[78] A. I would imagine so, I can't recall.

Q. Mr. Trott, Joint Exhibit 9-I, the type written statement of the description of the items is kind of hazy in there. Could you tell us what that description says?

A. I believe it says "balance on services rendered."

Q. And would you happen to know when those services were rendered?

A. No.

Q. Now, Mr. Trott, the invoices that we have just seen were sent by Cross Bow to Burns for services rendered during the year 1966. The total amount of those invoices was $36,780.44. Now subsequent to the year 1966 did Cross Bow, Inc. also perform services for Burns Investment Company?

A. Yes, it did.

Q. Were those services rendered to the approximate same extent as they were in 1966?

A. At least.

Q. For how long did this continue?

A. Until the formation of the corporation.

Q. Which was in what year?

A. Spring of '69, I believe.

Q. So from January 1 of 1967 to the spring of 1969 the development of this project continued at Cross Bow?

A. (Nodded.)

Q. Was Cross Bow, Inc. compensated for those services [79] to the same extent they were in 1966?

A. No, they were not.

Q. Have they been compensated to this day for those services?

A. No.

Q. Now, I believe that you testified before, Mr. Trott, that one of the purposes of the formation of the partnership in 1966 was to obtain capital for the continued development of this product concept, is that correct?

A. Yes.

Q. Was Echo and Courier partnerships, were they also created for the same purpose?

A. Essentially, yes.

Q. Now, Mr. Trott, I notice in looking at the invoices from Cross Bow to Burns and looking at the partnership agreement relating to Burns Investment Company, the word development and research permeates those docu-

ments. At what stage was the development of the trash burner in 1966 in comparison with the patented product?

A. I don't quite know how to answer there. We had a product on which we could have secured a patent at that time. The product we have now is in some ways essentially different. The product on which we got a patent, applied for a patent in '69 was no further developed from the standpoint of being a finished manufactured product than the project we had in 1966.

[80] THE COURT: Mr. Jansen, could you tell me what you're trying to develop with this line of testimony? I've let you run on and on, yet for the life of me I can't see what you're driving at.

MR. JANSEN: Your Honor, we have covered a lot in the last half hour and I think I'm about ready to summarize.

THE COURT: What is the issue here that you're establishing?

MR. JANSEN: Your Honor, we are concerned with showing that there in fact was no operating, existing trade or business known as Burns Development Company in the year 1966. There was no product to sell, the product itself had not been developed to the point where it could become acquainted with the commercial market, the office facilities were located at Cross Bow, Inc. which was the corporation performing the research work on that project. Your Honor, we are trying to show that in essence there was nothing more than a paper existence for all three of those partnerships.

THE COURT: Was it paper money they paid?

MR. JANSEN: Mr. Trott just indicated that in one instance he didn't receive payment, Your Honor.

THE COURT: There were checks mentioned.

MR. JANSEN: Yes, Your Honor.

THE COURT: All right. I have difficulty in seeing the issue, but I understand a little better what you're [81] driving at, but you're taking up an awful lot of time.

MR. JANSEN: Yes, Your Honor, I understand.

THE COURT: Cut it short.

MR. JANSEN: We're just about finished.

THE COURT: All right.

BY MR. JANSEN:

Q. Mr. Trott, in 1966 where were the Echo offices located?

A. They were domiciled with Cross Bow.

Q. Where were Courier offices located?

A. The same.

Q. So the three partnerships in Cross Bow's offices were all located in a facility of which the space was consumed approximately a hundred percent by Cross Bow?

A. Hmm hmm.

Q. Now did Echo have a telephone?

A. No.

Q. Did Courier have a telephone?

A. No.

Q. Were there any markings on the building which would identify it as Echo or Courier offices?

A. No. Echo did have a telephone because it was a telephone answering device which needed a telephone.

Q. Now, Mr. Trott, one final question. Subsequent to the year 1966, at any time did the Burns Investment Company [82] either the partnership known as the Burns Investment Company consider abandoning that trash burner project?

A. No.

Q. Let me ask the question again. Subsequent to the year 1966 did either yourself or any other members of

the partnership known as the Burns Investment Company consider abandoning that project.

MR. WALKER: Object to that question. This man can't testify to what someone else considered.

THE COURT: I think you're asking him to testify what was in the mind of other people. Maybe you can bring it out with a different type of question. I'll sustain the objection.

BY MR. JANSEN:

Q. Mr. Trott, subsequent to the year 1966 did you personally ever entertain any thoughts of abandoning that trash burner project?

A. Not the project, no.

Q. What aspect of the project did you consider abandoning?

A. An approach on which we had worked at some length appeared limited and it became quite clear that we probably would have to take a different approach to it.

Q. When you refer to approach what exactly do you mean? The outside exterior portion of the patented burner?

[83] A. It related to the mechanical functioning of the product.

Q. Assuming you were to have abandoned that approach, would that have necessitated a complete redoing of all the efforts that you had expended in the past year in developing that particular aspect of the project?

A. No. As a matter of fact we changed the approach quite fundamentally partially as I explained earlier in terms of the reduction of air inlets from two to one. We made some other changes, so in effect we radically changed the mechanical approach to the product.

Q. At what point in time did that radical change take place?

A. I believe in 1968.

Q. And the subsequent patent application was filed in 1969?

A. I believe so.

MR. JANSEN: That's all we have, Your Honor.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. DOAN:

Q. Mr. Trott, have you had any training, experience or education prior to joining Cross Bow in the area of engineering and inventing product development?

A. Only incidental with Procter and Gamble. The answer [84] is no.

Q. Mr. Trott, you testified that Burns, Echo and Courier shared the facilities of Cross Bow, Inc. Did Burns, Echo and Courier have any need for its own plant, its own offices?

A. No.

Q. In your opinion as a business man would it have been wise to incur expenses for rent and overhead that you did not need?

A. No.

Q. Mr. Trott, was the partnership income tax return for Burns Investment Company examined for the taxable year 1966?

A. I don't know. I think so. My recollection is yes.

Q. Did you have a conversation with an Internal Revenue Agent who examined that return?

A. I don't recall whether I did or not.

Q. You testified that numerous changes were made in the trashaway that existed when the partnership was formed in 1966, is that right?

A. Yes.

Q. Now these changes that were made, were they a result of your efforts alone?

A. No, they were not. They were the results of my efforts, the efforts of the designers and engineers who worked [85] for Cross Bow, and also the members of the partnership.

Q. Now did the members of the partnership Burns Investment Company meet with you regularly during 1966?

A. Yes.

Q. And did you discuss these design changes, mechanical functioning changes at those meetings?

A. Yes, we did.

Q. Did you discuss marketing problems?

A. Yes, we did.

Q. Did you discuss such things as patent position?

A. Yes.

Q. Trade mark?

A. Yes.

Q. Did you discuss whether or not Burns Investment Company should engage in the manufacturing versus having another manufacturer carry out this activity?

A. Yes.

Q. Was Mr. Snow present at these meetings during 1966?

A. He was present at most of them.

Q. Did Mr. Snow participate in the decision making process?

A. Yes, very much so.

Q. Did Mr. Snow participate in the over all management of this project?

A. To a large degree, yes.

[86] Q. Did he participate in the over all management of Courier Enterprises?

A. Yes.

Q. Did he participate in the over all management of Echo Development?

A. Yes, he did.

Q. Were these partnerships entered into for the purpose of making a profit?

A. Yes, certainly.

Q. Mr. Trott, could all three of these ventures, the Trashaway, the telephone answering device and the tape recorder have been developed within one single partnership?

A. They could have been if necessary.

Q. Why did you not use one single partnership?

A. Well, there were two reasons. One reason was that we didn't have identical participation in the partnership from one venture to the next. Another reason is it's just good business to keep projects like that separated and isolated so you can evaluate each on its own merits and judge the progress.

Q. Mr. Trott, you testified that Cross Bow did similar work for other clientele or other customers during the same period of time.

A. Right.

Q. Was the work Cross Bow carried on for Burns, Courier and Echo substantially different from what you did for other [87] customers?

A. Talking in broad terms of product development, no.

Q. Was your activity as a partner in Burns Investment Company substantially different from the activity of the other partners?

A. It was different in that I got much more deeply involved with the actual technical details of the design of the product.

Q. Why was that?

A. Because I was the closest one to the projects, the only one in a position to watch every detail of development.

Q. In other words you were the general partner or the managing partner?

A. Right.

Q. Mr. Trott, have you yourself as an individual been classified as being in the trade or business of inventing?

MR. JANSEN: Objection, Your Honor.

THE COURT: Has he been classified as being in the trade or business of being an inventory?

MR. DOAN: Yes, your Honor.

THE COURT: I don't believe I quite –

MR. DOAN: The point is that Mr. Trott was a member of the same partnership as Mr. Snow and Mr. Trott has been identified as being in the trade or business of inventing, yet he has testified that his activities in these ventures was [88] substantially similar to Mr. Snow's activities.

THE COURT: By whom has he been identified?

MR. DOAN: That was my next question, Your Honor. Identified by the Internal Revenue Service.

THE COURT: Do you want to be heard on your objection?

MR. JANSEN: Yes, Your Honor, I do. Your Honor, any characterization that may have been made by any member of the Internal Revnue Service with respect to Mr. Trott is completely immaterial and irrelevant to the issues in this case.

MR. DOAN: Mr. Trott was a member of the same partnership, the same business venture, engaged in the same activities.

THE COURT: Suppose he had been recognized as an inventor, would that same thing apply to Mr. Snow?

MR. DOAN: No, Your Honor, but it would apply to the partnership. Your Honor, we have cases that stand

for the principle of law, that a partner engaged in the business of the partnership, by virtue of being a partner in a partnership, the individual is engaged in that trade or business. The Internal Revenue Service has said that Mr. Trott is in the business of being an inventor.

THE COURT: I'll let you make your record on it, Mr. Doan, but I'm not sure at this point what weight or materiality will be given to it.

[89] BY MR. DOAN:

Q. Will you answer the question?

A. Can you repeat it please.

Q. Mr. Trott, have you been characterized or identified by the Internal Revenue Service as being engaged in the trade or business of being an inventor?

A. Yes.

Q. For what year?

A. I don't recall.

Q. Was it 1966?

A. Yes, it could be.

Q. Was it the year in which the partnership return of Burns Investment Company was examined?

A. I believe so.

MR. DOAN: I have no further question, Your Honor.

MR. JANSEN: Your Honor, I have a couple questions on redirect.

REDIRECT EXAMINATION

BY MR. JANSEN:

Q. Mr. Trott, you just indicated that you met regularly in 1966 with some of the other members of this partnership. Generally where were those meetings held?

A. They were held at a number of places. They were held at Cross Bow, they were held at my house, they were

held in the residence of the partners. I can recall at least two [90] dinner meetings in restaurants.

Q. Did any of those meetings ever revolve around social events between the partners?

A. Some.

Q. Were any of those meetings ever held at Mr. Snow's home?

A. Yes.

Q. Were any of them ever held at your home?

A. Yes.

Q. Were any of them ever held at other partners' homes?

A. Yes.

Q. Is there a pretty close social relationship existing between the parties to the partnership?

A. Not as a group, no.

Q. But as individuals, there is?

A. Yes.

Q. Are you close to Mr. Snow?

A. Yes.

Q. Now, Mr. Trott, you also mentioned that you entered into this partnership relationship with respect to each one of these entities for the purpose of making a profit, is that correct?

A. Yes.

Q. In reading the partnership agreements, the purpose of the partnership is stated in all three of these agreements [91] to be the development of a product and obviously from looking at the invoices research is being done by Cross Bow, Inc.

MR. WALKER: Your Honor, I'll have to object on the grounds that counsel is seeking to attack the testimony of his own witness.

THE COURT: I'll sustain the objection. You're arguing also.

BY MR. JANSEN:

Q. Let me ask this question, Mr. Trott, at what point in time did you anticipate making a profit?

A. When the partnership was formed we anticipated making a profit very shortly or at least be able to proceed definitely to make a profit.

Q. At some point in the future.

A. In the near future.

Q. At the time the partnership agreements were —

THE COURT: Didn't you go over all that on your direct? You're on redirect now.

MR. JANSEN: Yes, Your Honor.

Your Honor, that's all the questions I have.

THE COURT: The purpose if I understand in forming these three partnerships was because they related to different types of machinery or products?

THE WITNESS: Right.

THE COURT: One being a lear burner or trash burner, [92] another being a telephone answering service, and another a tape recorder.

THE WITNESS: Correct.

THE COURT: Entirely different products. And one purpose in having three, if I get the effect of your testimony, was to hold each of those businesses separate and apart. Am I correct that the development of the machines or whatever you made, the product itself, was carried on, the engineering and the designing and so forth was carried on largely by the Cross Bow Company?

THE WITNESS: Correct.

THE COURT: You had the ideas and you got the others to make, whatever you call them, the sample products originally and see if it would work?

THE WITNESS: Right.

THE COURT: Am I correct in that?

THE WITNESS: Essentially, yes.

THE COURT: Most of the engineering and design work then under your supervision was done by Cross Bow?

THE WITNESS: That is right.

THE COURT: And you were managing Cross Bow and you were also managing partner of these three partnerships. Most of the others with one or two exceptions were limited partners?

THE WITNESS: Yes.

THE COURT: You had the main responsibility for the [93] management and conduct of that business.

THE WITNESS: That's correct.

THE COURT: What was the purpose of bringing in the limited partners at all?

THE WITNESS: To provide funds and also assistance in managing the ventures.

THE COURT: By assistance you mean advice and so forth as you would get from anybody in the way you operate and conduct a business? Not in the engineering or the actual design –

THE WITNESS: Not in the technical sense, but certainly from the standpoint of the way the design related to the objective of the project or what would come out of the project.

THE COURT: They might offer suggestions but it wouldn't be in the sense of expert technical advice?

THE WITNESS: No.

THE COURT: All right. What was the extent of the cash contributions of these limited partners, generally.

THE WITNESS: In one particular, Burns for example, I believe that was forty thousand dollars. It's in one of the exhibits.

THE COURT: They contributed forty thousand dollars and you contributed an equal amount?

THE WITNESS: No, I contributed right and title to [94] the project when the partnership was formed.

THE COURT: You contributed more in the way of know how and expertise or the idea.

THE WITNESS: If I may, I'll take Burns as an example. Prior to the formation of the partnership I funded the development work. Then when the partnership was formed, we utilized the funds contributed by the limited partners. The agreement between Burns Partnership and Cross Bow or me as the sole owner, was that Cross Bow would carry the burden for that money to the point of completion of the project, which we did, and we exhausted the forty thousand dollars contributed by the partners, and thereafter it was funded by me.

THE COURT: And that's substantially the same thing that happened with respect to the other two partners?

THE WITNESS: Yes, with respect to the work done after the funds were exhausted.

THE COURT: I see in the Burns Investment Company the contribution of the limited partners was twenty, ten and ten, a total of forty thousand dollars. I assume the partnership agreements show their cash contribution.

THE WITNESS: Right.

THE COURT: Does either side want to ask anything further?

MR. DOAN: Yes, Your Honor. At one point you asked Mr. Trott if any of these partners were invited into the partner- [95] ship because of their expertise. Mr. Trott indicated that was not the case.

THE COURT: Expertise with respect to designing and engineering.

MR. DOAN: Yes, Your Honor, and my point is that I believe that's too broad.

THE COURT: Whatever you believe about it, if you

want to ask him some questions you may do so. I have certain beliefs myself.

RECROSS EXAMINATION

BY MR. DOAN:

Q. Mr. Trott, did you rely on Mr. Snow for his expertise in the area of designing products to any degree?

A. No, I did not rely on any technical or engineering expertise. I relied on his expertise from the standpoint of being able to evaluate design features from the marketing standpoint and other standpoints.

THE COURT: That's somewhat similar to his expertise in the sale and so forth of products produced by Procter and Gamble?

THE WITNESS: Yes.

THE COURT: He's a good business man, good salesman; he knows, I assume, or has a good idea of what may or may not appeal to the buying public.

THE WITNESS: That's right.

[96] THE COURT: Anything further from either side.

MR. DOAN: Your Honor, this is rather late, I would like to offer one further piece of evidence.

THE COURT: I haven't cut you off yet.

THE CLERK: Petitioner's Exhibit No. 29 marked for identification.

(The document referred to was marked for identification as Petitioner's Exhibit No. 29.)

BY MR. DOAN:

Q. Mr. Trott, I hand you this brochure and ask you to describe it to the Court.

A. This is a brochure used for advertising and pro-

motion purposes in the sale of our incinerator under the brand name Trashaway.

MR. DOAN: Your Honor, I offer the brochure describing the Trashaway as it exists today, in evidence.

THE COURT: All right, the document referred to will be received in evidence as Petitioner's Exhibit 29.

(The document previously marked for identification as Petitioner's Exhibit No. 29 was received in evidence.)

MR. JANSEN: Your Honor, if I may, we have previously identified through Mr. Trott Respondent's Exhibit W which at this time I would like to offer into evidence.

THE COURT: All right, that has not previously been offered. That is the letter from Mr. Trott.

[97] MR. WALKER: No objection.

THE COURT: The document referred to will be received in evidence as Respondent's Exhibit W.

(The document previously marked for identification as Respondent's Exhibit W was received in evidence.)

THE COURT: Anything further? Gentlemen, don't take too much comfort one way or the other with respect to the questions the Court has asked. Sometimes I try to anticipate if I can problems or short cuts that I may have to finding an ultimate fact, and I don't want to get lost in all this maze.

Is that all now? Anything further in this case? Both sides rest. All right, the case will be submitted. How much time do you want for briefs, gentlemen? Will 45 and 30 be suitable?

MR. DOAN: Yes, Your Honor, that's suitable.

MR. JANSEN: Yes, Your Honor.

THE COURT: All right, they will be simultaneous briefs. Opening briefs in 45 days, reply briefs in 30 days thereafter. The Clerk will read those dates.

THE CLERK: January 3 for opening briefs, 1972, and February 2nd, 1972 for reply briefs.

THE COURT: That concludes this case.

(Whereupon, at 3:40 p.m. the trial in the above-entitled matter was concluded.)

Docket No. 7125-70

JT Exh. 2-B

AGREEMENT

Agreement made this 8th day of July, 1966, at Cincinnati, Ohio, by and between DAVID H. TROTT, as General Partner, and EUGENE W. GILSON, THOMAS J. KLINEDINST, and E. A. SNOW, as Limited Partners,

WITNESSETH THAT:

WHEREAS, the General and Limited Partners referred to above desire to form a limited partnership pursuant to the Uniform Partnership Law of Ohio, Chapter 1781 of the Ohio Revised Code.

NOW, THEREFORE, it is agreed by and among the parties hereto that upon the execution and delivery of a Certificate of Limited Partnership, a Limited Partnership shall exist composed of the General and Limited Partners referred to above, formed pursuant to Chapter 1781 of the Ohio Revised Code, upon the following terms and conditions:

1. The partnership shall be conducted under the firm name and style of "Burns Investment Company."

2. The principal office and place of business shall be at 8120 Blue Ash Road, Cincinnati, Ohio 45236.

3. The purpose and business of the partnership shall be the development of a special purpose incinerator for the consumer and industrial markets.

4. The name and address of the General Partner and each Limited Partner and the amount of cash contributed

by each Limited Partner, together with the interest in the profits of the partnership of the General Partner and the Limited Partners, shall be as follows:

GENERAL PARTNER

Name and Address	Percentage
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio 45208	50%

LIMITED PARTNERS

Name and Address	Limited Percentage	Amount of Contribution
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio 45208	34%	All right, title and interest to a product concept, individually owned by David H. Trott, more particularly described as an incinerator designed for rapid consumption and burning of tree leaves and similar combustible materials.
Eugene W. Gilson c/o The Procter & Gamble Company P. O. Box 599 Cincinnati, Ohio 45201	8%	$20,000.00
Thomas J. Klinedinst 2531 Observatory Avenue Cincinnati, Ohio 45208	4%	$10,000.00
E. A. Snow Highland Towers Cincinnati, Ohio 45202	4%	$10,000.00

The above detailed contributions of the Limited Partners shall be paid to the partnership by July 8, 1966.

5. The partnership shall commence upon the execution and delivery of a Certificate of Limited Partnership in accordance with the provisions of Section 1781.02 of the

Ohio Revised Code and said partnership shall continue thereafter until the "business and assets" are sold, until the earlier death or incapacity of the General Partner or until dissolved by the partners; provided, however, that the General Partner shall not cause a dissolution prior to the accomplishment of the partnership's purpose as set out in Item 3 hereof, unless such purpose has been abandoned as the business of the partnership.

6. A Limited Partner may freely transfer or assign his interest to any assignee and such assignee may, at the discretion of the Limited Partner, be made a "Substituted Limited Partner" as defined in Section 1871.19 of the Ohio Revised Code. Said transfer or assignment, however, shall not be effective unless the assigning Limited Partner shall have given notice in writing of the transfer or assignment to the General Partner thirty (30) days prior thereto. The General Partner, upon receiving such notification, shall promptly inform all other Limited Partners of the transfer or assignment.

7. The General Partner agrees that upon his death the right and obligation to make a certain disposition (as hereinafter described) of his general and limited partnership interest shall be vested in a committee of Limited Partners. Said committee shall consist of three (3) Limited Partners, as follows: Eugene W. Gilson, Thomas J. Klinedinst, and E. A. Snow. Upon the death or incapacity of one of these Limited Partners, the General Partner may appoint the Substituted Limited Partner or any other Limited Partner to the vacancy so created; in the event that the above-described death or incapacity of a Limited Partner on this committee reduces the total number of Limited Partners on the committee to two (2), then such remaining Limited Partners shall be the committee described in this item with all rights, privileges, and obligations granted and imposed

hereunder. In all other circumstances the General Partner shall not remove or replace a Limited Partner from said committee, nor shall the General Partner increase the number of Limited Partners on the committee, unless the removal, replacement or enlargement is agreed to by a majority of the Limited Partners on said committee. The intention of the General and Limited Partners under this item is to provide for the continuation of the business of the partnership in another entity subsequent to the death or disability of the General Partner. Said committee shall, therefore, have the right and obligation to form a successor Limited Partnership within the six-month period following the death or incapacity of the General Partner. In the creation of such successor Limited Partnership said committee may choose and include additional parties as either general or limited partners, and may establish a general or limited interest, or both, in such successor limited partnership in exchange for the general and limited interests of the General Partner. In any event, however, the general and limited interests of the General Partner shall be exchanged for a total interest (whether general or limited, or both) which is proportionate to the interests received by the surviving partners; such proportions shall be based on the relative interests held by the General and other surviving Limited Partners at the date of the General Partner's death or incapacity.

If in the judgment of said committee the formation of a successor partnership would not be feasible or not in the best interest of all the partners and provided the General Partner's legal representatives or guardian shall concur in such judgment, then said committee shall be relieved from its obligation to form a successor partnership and it may in agreement with such legal representatives or guardian make such other disposition of the General Partner's interests as it deems advisable under the circumstances.

In the event that a successor partnership is formed or another disposition is made pursuant to this item 7, then the inventory and appraisement of the General Partner's interests required by Section 1779.01 O.R.C. (or a successor section) shall not be required.

8. The death of a Limited Partner shall not terminate the partnership business. On the death of a Limited Partner, his executor or administrator shall have all the rights of a Limited Partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee as Substituted Limited Partner. The estate of a deceased Limited Partner shall be liable for all of his liabilities as a Limited Partner.

9. The liability of each Limited Partner for partnership debts shall in no event exceed the amount of contribution stated in this agreement and the certificate as having been made by each of them.

10. The General Partner shall have sole rights of management and conduct of the partnership business, and shall exert his best efforts to the conduct of the business. Unless authorized by the General Partner, no Limited Partner may transact the partnership business or act as agent or otherwise for the firm.

11. All funds of the partnership shall be deposited in its name in such checking account or accounts as shall be designated by the General Partner. All withdrawals therefrom shall be made upon checks signed by the General Partner.

12. Books of account for the partnership shall be kept on the accrual basis of accounting and the General and Limited Partners or their accredited representatives shall have access thereto at all reasonable times. The books of

account shall be audited each year by a certified or registered public accountant chosen by the General Partner.

13. The General and Limited Partners hereto shall promptly make and severally sign and acknowledge a Certificate of Limited Partnership and cause the same to be recorded in accordance with the provisions of Section 1781.02.

14. Any amendment, alteration, addition, modification or qualification may be made in the terms of this agreement when made in writing and signed by all the partners.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

/s/ DAVID H. TROTT
General Partner

/s/ EUGENE W. GILSON
Limited Partner

/s/ THOMAS J. KLINEDINST
Limited Partner

/s/ E. A. SNOW
Limited Partner

Docket No. 7725-70

Exh. 3-C

BURNS INVESTMENT COMPANY
AMENDMENT TO AGREEMENT
DATED JULY 8, 1966

Amendment to agreement made this 3rd day of April, 1967, at Cincinnati, Ohio, by and between DAVID H. TROTT, as General Partner, and EUGENE W. GILSON, THOMAS J. KLINEDINST, and E. A. SNOW, as Limited Partners,

WITNESSETH THAT:

WHEREAS, the General and Limited Partners referred to above are presently members of a limited partnership formed on July 8, 1966, pursuant to the Uniform Partnership Law of Ohio, Chapter 1781 of the Ohio Revised Code;

WHEREAS, such General and Limited Partners desire to amend and modify Item 4 of said agreement by conforming such item to the economic considerations that underly such agreement.

NOW, THEREFORE, as agreed by and among the parties hereto that said partnership agreement dated July 8, 1966, shall be amended by the deletion of the entire Item 4 of the present agreement and by the insertion of the following Item 4 in its place:

4. The name and address of the General Partner and each Limited Partner and the amount of cash contributed by each Limited Partner, together with the interest in the profits of the partnership of the General Partner and the Limited Partners, shall be as follows:

GENERAL PARTNER

Name and Address	Percentage
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio 45208	50%

LIMITED PARTNERS

Name and Address	Limited Percentage	Amount of Contribution
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio 45208	34%	All right, title, and interest to a product concept, individually owned by David H. Trott, more particularly described as an incinerator designed for rapid consumption and burning of tree leave and similar combustible materials.
Eugene W. Gilson c/o The Procter & Gamble Company P. O. Box 599 Cincinnati, Ohio 45201	8%	$20,000.00
Thomas J. Klinedinst 2531 Observatory Avenue Cincinnati, Ohio 45208	4%	$10,000.00
E. A. Snow Highland Towers Cincinnati, Ohio 45202	4%	$10,000.00

The above detailed contributions of the Limited Partners shall be paid to the partnership by July 8, 1966.

Notwithstanding the above percentage of interest for each partner, if the partnership experiences a net loss for any fiscal year or period, which loss reduces the total credit balance in the capital accounts of the partnership to an amount which is lesser than the total amount of cash contributed by the Limited Partners to the partnership's capital, then such portion of the net loss which causes the reduction in the contributed cash capital shall be

shared solely by the Limited Partners in the same proportion that the amount of their cash contribution bears to the total amount of cash contributed by all the Limited Partners. And while there exists any reduction in the Limited Partners' contributed cash capital and the partnership experiences a net profit in the following fiscal year or period, then such portion of the net profit which eliminated such reduction and restores the total cash contributed to capital shall be shared solely by the Limited Partners in the same proportions as is set out above for the sharing of any net loss.

Nothing in this Item 4 is intended to modify or change the express language of Item 9 of this agreement.

The modifications made herein to the General and Limited Partners' interest in the partnership's profits and losses shall be effective for the fiscal period ending December 31, 1966 and thereafter.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

/s/ DAVID H. TROTT
General Partner

/s/ EUGENE W. GILSON
Limited Partner

/s/ THOMAS J. KLINEDINST
Limited Partner

/s/ E. A. SNOW
Limited Partner

CERTIFICATE OF LIMITED PARTNERSHIP

AGREEMENT made this day of March, 1965, at Cincinnati, Ohio, by and among David H. Trott, Robert Boggild and William Dale, as General Partners, and George L. Sterne, Edwin A. Snow, Trustee, Edward J. Noble, L. S. Brucker, Jr., Trustee, and Eugene W. Gilson as Limited Partners,

W I T N E S S E T H :

WHEREAS, the General and Limited Partners referred to above desire to form a Limited Partnership pursuant to the Uniform Limited Partnership Act of Ohio, Chapter 1781 of the Ohio Revised Code,

NOW, THEREFORE, it is agreed by and among the parties hereto that upon the execution and delivery of this Certificate of Limited Partnership, a Limited Partnership shall exist composed of the General and Limited Partners referred to above, formed pursuant to the Uniform Limited Partnership Act, Chapter 1781 of the Ohio Revised Code, upon the following terms and conditions:

(1) The partnership shall be conducted under the firm name and style of "Echo Development Company."

(2) The principal office and place of business shall be at 8120 Blue Ash Road, Cincinnati, Ohio.

(3) The purpose and business of the partnership shall be the development of a new consumer product in the electronics field.

(4) The name and address of each General Partner and each Limited Partner and the amount of cash or the agreed value of other property contributed by each Limited Partner, together with the interest in the profits of the partnership of each General Partner and Limited Partner shall be as follows:

GENERAL PARTNERS

Name and Place of Residence	Percentage
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio 45208	20%
Robert Boggild 8770 Indian Hill Road Cincinnati, Ohio 45243	10%
William Dale 197 Ireland Avenue Cincinnati, Ohio 45218	10%

LIMITED PARTNERS

Name and Place of Residence	Amount of Contribution	Percentage
George L. Sterne 615 McAlpin Avenue Cincinnati, Ohio 45220	All right, title and interest to a product concept individually owned by George L. Sterne, which product concept is more particularly described in an Agreement dated February 18, 1965, between George L. Sterne, David H. Trott, Robert Boggild and William L. Dale.	20%
Edwin A. Snow, Trustee Highland Towers Cincinnati, Ohio	$15,000.00	10%
Edward J. Noble Sierra Amatepec 173 Mexico, D.F., Mexico	$15,000.00	10%
L. S. Brucker, Jr., Trustee 3045 Erie Avenue Cincinnati, Ohio	$15,000.00	10%
Eugene W. Gilson 7 avenue de l'Ermitage Geneva, Switzerland	$15,000.00	10%

(5) The partnership shall commence upon the execution and delivery of these Articles, the payment by and

on behalf of each Limited Partner of his contribution to the partnership and the execution and filing of a signed copy of this Certificate of Limited Partnership in accordance with the provisions of Section 1781.02 of the Ohio Revised Code. The partnership shall thereafter continue until dissolved by the partners, or until the earlier death or incapacity of any of the then General Partners.

(6) Any amendment, change, alteration, addition, modification, or qualification may be made in the terms of this contract when made in writing and signed by all the partners.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year first above written.

/s/ DAVID H. TROTT
General Partner

/s/ ROBERT BOGGILD
General Partner

/s/ WILLIAM L. DALE
General Partner

. . . .
George L. Sterne, Limited Partner

/s/ EDWIN A. SNOW
Trustee, Limited Partner

/s/ EDWARD J. NOBLE
Limited Partner

/s/ L. S. BRUCKER, JR.
Trustee, Limited Partner

. . . .
Eugene W. Gilson, Limited Partner

CERTIFICATE OF LIMITED PARTNERSHIP

AGREEMENT made this day of March, 1965, at Cincinnati, Ohio, by and between DAVID H. TROTT, ROBERT BOGGILD and WILLIAM DALE, as General Partners, and EDWIN A. SNOW, Trustee, EDWARD J. NOBLE, L. S. BRUCKER, JR., Trustee, and EUGENE W. GILSON, as Limited Partners,

WITNESSETH:

WHEREAS, the General and Limited Partners referred to above desire to form a Limited Partnership pursuant to the Uniform Limited Partnership Act of Ohio, Chapter 1781 of the Ohio Revised Code,

NOW, THEREFORE, it is agreed by and among the parties hereto that upon the execution and delivery of this Certificate of Limited Partnership, a Limited Partnership shall exist composed of the General and Limited Partners referred to above, formed pursuant to the Uniform Limited Partnership Act, Chapter 1781 of the Ohio Revised Code, upon the following terms and conditions:

(1) The partnership shall be conducted under the firm name and style of "Courier Enterprises."

(2) The principal office and place of business shall be at 8120 Blue Ash Road, Cincinnati, Ohio.

(3) The purpose and business of the partnership shall be the development of a new consumer product in the electronics field.

(4) The name and address of each General Partner and each Limited Partner and the amount of cash contributed by each Limited Partner, together with the inter-

est in the profits of the partnership of each General Partner and Limited Partner shall be as follows:

GENERAL PARTNERS

Name and Place of Residence	Percentage
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio 45208	40%
Robert Boggild 8770 Indian Hill Road Cincinnati, Ohio 45243	10%
William Dale 197 Ireland Avenue Cincinnati, Ohio 45218	10%

LIMITED PARTNERS

	Amount of Contribution	
Edwin A. Snow, Trustee Highland Towers Cincinnati, Ohio	$5,000.00	10%
Edward J. Noble Sierra Amatepec 173 Mexico, D.F., Mexico	$5,000.00	10%
L. S. Brucker, Jr., Trustee 3045 Erie Avenue Cincinnati, Ohio	$5,000.00	10%

Eugene W. Gilson 7 avenue de l'Ermitage Geneva, Switzerland	$5,000.00	10%

(4) The partnership shall commence upon the execution and delivery of these Articles, the payment by and on behalf of each Limited Partner of his contribution to the partnership and the execution and filing of a signed copy of this Certificate of Limited Partnership in accordance with the provisions of Section 1781.02 of the Ohio Revised Code. The partnership shall thereafter continue until dissolved by the partners, or until the earlier death or incapacity of any of the then General Partners.

(6) Any amendment, change, alteration, addition, modification, or qualification may be made in the terms of this contract when made in writing and signed by all the partners.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year first above written.

/s/ DAVID H. TROTT
General Partner

/s/ ROBERT BOGGILD
General Partner

/s/ WILLIAM L. DALE
General Partner

/s/ EDWIN A. SNOW
Trustee, Limited Partner

/s/ EDWARD J. NOBLE
Limited Partner

/s/ L. S. BRUCKER, JR.
Trustee, Limited Partner

/s/ EUGENE W. GILSON
Limited Partner

LETTER FROM DAVID H. TROTT TO ROBERT BOGGILD DATED 4-28-65

U. S. Tax Court, November 16, 1971

Docket No. 7125-70

April 28, 1965

Mr. Robert Boggild, President,
Crossbow, Incorporated
8120 Blue Ash Road
Cincinnati, Ohio 45236

Dear Bob:

This outlines the basis on which Crossbow will undertake development work on a compact battery-operated tape recorder, designated by the code name CINCH, on behalf of the partnership owning all rights to same, known as Courier Enterprises.

1. Crossbow will develop CINCH to the working model stage, and as far beyond as available money may afford.

2. All work will be done on a time and materials basis, at the following labor rates:

Drafting	–	$6.00 per hour
Shop	–	$8.00 per hour
Design	–	$9.00 per hour
Development Engineer	–	$12.00 per hour
Chief Project Engineer	–	$20.00 per hour

It is my understanding that the above rates are competitive in the community to those charged by other shops engaged in similar work.

3. Crossbow will exert its best efforts to complete the assignment within the funds which Courier Enterprises has available for this purpose – $20,000.00 in total.

4. Crossbow will make every effort to complete the assignment within nine months from this date. If in the sole opinion of Courier Enterprises the progress of the project is unsatisfactory, it may remove the project from Crossbow responsibility after one year from this date.

5. Any equipment purchased by Crossbow solely for use in connection with this assignment, will be charged to the project and will become the property of Courier Enterprises.

6. All rights to patentable features, and to patents thereon, developed by Crossbow specifically in the course of development work on CINCH, will become the property of Courier Enterprises.

7. Courier Enterprises will be billed monthly for time and materials. No advance payments will be made. On occasion, however, Crossbow may request a cash advance when necessary to cover a substantial cash outlay by Crossbow, in the amount of this outlay.

8. The confidential nature of Crossbow's work on CINCH will be guarded insofar as possible by written security agreement signed by all Crossbow employees.

Please initial one copy of this letter and return it to me, as evidence of your agreement.

Sincerely,

/s/ D. H. TROTT

/s/ R. BOGGILD
DHT/do

LETTER FROM WOOD, HERRON & EVANS TO DAVID H. TROTT, DATED 12-10-65

U. S. Tax Court, November 16, 1971
Docket No. 7125-70

LETTERHEAD OF WOOD, HERRON & EVANS

December 10, 1965

Mr. David H. Trott
3351 Stettinius
Cincinnati, Ohio 45208

Re: Cyclone Furnace Leaf Burner

Dear Dave:

This is a report of the supplementary patentability search which we have made with respect to your cyclone burner invention. As I understand it, the original search made in late 1964 was reported orally. I believe at that time you were advised that there was no chance for patent protection on the broad concept of a cyclone furnace used in conjunction with a vacuum cleaner type leaf collector mounted on a rolling platform.

Your invention has progressed from the time of that report in the direction of improving the burning apparatus and you have improved it in three major respects. First, you mount a diverter at the top of a primary combustion chamber and create above it a secondary combustion chamber. The diverter has a central passageway projecting into the primary combustion chamber. Distribution vanes are secured to the top of the passageway and cause gases and entrained solids to be swirled in the secondary chamber.

The second feature might be called your ignition structure. This comprises a grate at the lower end of the primary combustion chamber in combination with vanes extending across the lower end of the combustion chamber and spaced above the grate. A secondary air inlet passageway is connected to the lower end of the combustion chamber below the grate. In operation, a few glowing briquettes are placed on the grate and the secondary air causes them to glow brightly and ignite any solids contacting them. The vanes serve to break up the high velocity swirling air in the main combustion chamber, thereby creating in the space between the vanes and the grate a more or less gently flowing air which permits the solids to remain in contact with the briquettes for a sufficient length of time for their ignition.

The third feature comprises the use of a cooling jacket surrounding the main and secondary combustion chambers with provision for bleeding secondary air from the main intake blower to the jacket. The important aspect of this feature is that a large volume of air is required to bring the solids into the burner but preferably that volume of air should be diminished before going into the combustion chamber for too much air will have an adverse effect on the burning. By taking secondary air from the main intake, you are able to provide (a) sufficient air to bring the solids into the system, (b) sufficient air for cooling, and (c) diminished air, as desired, in the combustion chamber.

We are of the opinion that the Patent Office would be justified in granting protection to the features as outlined above. We may encounter some difficulties in obtaining protection for the reasons discussed below. Our opinion is based on a search of the Patent Office records and our study of the pertinent patents located which are as follows:

Patent No.	Inventor	Date
3,202,118	J. J. Baldine	Aug. 24, 1965
2,861,423	J. Jerie et al	Nov. 25, 1958
2,793,626	E. Hubel	May 28, 1957
2,646,758	J. G. Greemen	July 28, 1953
2,527,934	E. S. Jeffries, Sr.	Oct. 31, 1950

The Hubel patent 2,793,626 and Greemen patent 2,-646,758 show the concept of two distinct combustion chambers. Neither shows your concept of two spaced cyclone chambers located one above the other and separated by the diverter. Your distinct structure should be patentable. However, in writing it up, we will be well advised to develop reasons for its being considered an improvement over structures such as are shown in the Hubel and Greemen patents. Otherwise, the patent Examiner might well take the position that your particular structure for achieving two combustion chambers is merely a matter of choice not involving the exercise of invention.

The Greemen patent is also pertinent in showing a grate at the bottom of the combustion chamber. The Greemen patent, however, lacks the vanes spaced above the grate which control the flow of air over the grate. None of the other patents shows that particular structure and we believe that we should be able to obtain patent protection to it.

The Jefferies patent 2,527,934 and the Jerie patent 2,861,423 show a combustion chamber surrounded by jackets with provision for cooling air to pass between the jacket and the combustion chamber. Neither shows the concept of bleeding off a portion of the main inlet air to attain the results outlined above. In the absence of a showing of your particular combination, the possibility of obtaining patent protection exists although we will be

faced with a position that the bleeding off of secondary air from the main source is a matter of convenience not involving the exercise of invention.

I have reviewed the patents which were located during the earlier search and I see nothing in them which would alter the opinions expressed above. I am returning those patents with the newly obtained patents for your consideration. Before beginning the preparation of a patent application, I would like to have the patents returned for such assistance as they will be in the preparation of an application.

I am not sure that you are ready to have the patent application prepared. If you are in the process of constructing a prototype utlizing your inventive features, you may wish to delay the preparation of the application until the completion of the prototype so that the application as filed will have the benefit of any improvements and/or greater understanding of the operation obtained through the creation of the prototype.

Sincerely,

/s/ BILL
William G. Konold

WGK:st
Enclosures

LETTER FROM WOOD, HERRON & EVANS TO DAVID H. TROTT, DATED 2-22-66

U. S. Tax Court, November 16, 1971

Docket No. 7125-70

LETTERHEAD OF WOOD, HERRON & EVANS

February 22, 1966

Mr. David H. Trott
Crossbow, Inc.
8120 Blue Ash Road
Cincinnati, Ohio

Dear Dave:

This is to confirm the oral advice given to you during our meeting with Ralph Ross on January 21 respecting the status of the leaf burner development. I have advised you that it is reasonable to conclude that the leaf burner has not yet been reduced to practice within the contemplation of Section 102G of the patent laws as incorporated in the Internal Revenue Code. This opinion is based on my examination of the leaf burners and my discussion with you of the tests which you have made on them.

We examined two models and in general neither of them performs satisfactorily enough to be a marketable product.

One of the deficiencies of the first model is that it burned too hot and this suggests a new approach to the cooling system.

The second model did not handle fresh leaves too well, the fresh leaves becoming jammed in their main intake. Further, and this may be applicable to both models, unburned solids tend to drop below the main cyclone air

stream into the ignition area and require additional blasts of secondary air up through the bottom of the device in order to force these solids into the main stream.

The two models of the leaf burner are big institutional type devices and an objective is to make a smaller leaf burner which will be saleable to the individual home owner. Since it is obviously more difficult to handle leaves in a smaller unit than in the bigger units, which have not yet performed satisfactorily, much development work will have to be done in the development of the small unit.

The fact situation presents a rather close question of the applicability of the term "reduce to practice" to your leaf burner. However, the Patent Office standard for reduction of practice is very high. The manner in which Section 102G is interpreted in patent case law is well expressed in *Field* v. *Knowles*, 183 F2d 593, 601 as follows:

> "Thus, in the case of an ice-making machine, it must appear from the tests relied upon to establish actual reduction to practice that the machine operated for a sufficient length of time to demonstrate continued and adequate production of ice."

In the present situation, neither of the two models of leaf burners operated for a sufficient length of time to demonstrate continued and adequate burning of leaves. Rather, the tests demonstrate that additional work would be necessary in order to modify them to the extent necessary for the continuous leaf burning function.

In light of the foregoing, I have advised that the leaf burner invention has not yet been reduced to practice.

Sincerely,

/s/ BILL
William G. Konold

WGK: st

ORDER OF THE SUPREME COURT OF THE UNITED STATES ALLOWING CERTIORARI, DATED 1-7-74

SUPREME COURT OF THE UNITED STATES

JANUARY 7, 1974

SNOW

v.

COMMISSIONER OF INTERNAL REVENUE

No. 73-641

"The petition for a Writ of Certiorari is granted. Mr. Justice Stewart took no part in the consideration or decision of this petition."

APPENDIX
Volume II

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-641

EDWIN A. AND HELEN B. SNOW
Petitioners,

—v.—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR CERTIORARI FILED OCTOBER 12, 1973
CERTIORARI GRANTED JANUARY 7, 1974

INDEX

Note: The opinions of the Tax Court and the Court of Appeals appear in the Appendix to Snow's Petition for a Writ of Certiorari at pages 13-44.

CLOSED ON SURVEY

EXH. 1-A

1040 U.S. Individual Income Tax Return 1966

for the year January 1–December 31, 1966, or other taxable year beginning .... 1966, ending ...., 19........ U.S. Treasury Department—Internal Revenue Service

Please print or type

First name and initial (If joint return, use first names and middle initials of both): EDWIN A. AND HELEN B.

Last name: SNOW

Your social security number (Husband's, if joint return): 268 10 7113

Home address (Number and street or rural route): HIGHLAND TOWERS, 1071 CELESTIAL STREET

Your occupation: EXECUTIVE

City, town or post office, and State: CINCINNATI, OHIO

ZIP code: 45202

Wife's number, if joint return: 269 09 1810

Wife's occupation:

Enter the name and address used on your return for 1965 (if the same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1965 names and addresses.

SAME

Your present employer and address: THE P & G. COMPANY, CINCINNATI, OHIO

DKT NO. 7125-70

Wife's present employer and address, if joint return

Filing Status—check only one:

- 1a ☐ Single
- 1b ☒ Married filing joint return (even if only one had income)
- 1c ☐ Married filing separately. If your husband or wife is also filing a return give his or her first name and social security number.
- 1d ☐ Unmarried Head of Household
- 1e ☐ Surviving widow(er) with dependent child

Exemptions — Regular / 65 or over / Blind

Gt EXH. 1-A

- 2a Yourself . ☒ ☐ ☐
- 2b Wife . . ☒ ☐ ☐

Enter number of exemptions checked ▶ 2

3a First names of your dependent children who lived with you .... SEE SCHEDULE 1

Enter number ▶ 2

3b Number of other dependents (from page 2, Part I, line 3)

4 Total exemptions claimed ▶ 4

Attach Copy B of Form W-2 here

Income If joint return, include all income of both husband and wife	5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation SCH. 2 ▶	200,000
	6	Other income (from page 2, Part II, line 8) ▶	-/15,002
	7	Total (add lines 5 and 6)	184,998
	8	Adjustments (from page 2, Part III, line 5) ▶	
	9	Total income (subtract line 8 from line 7) ▶	184,998
Figure tax by using either 10 or 11	10	Tax Table—if you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11a, b, c, or d. Enter tax on line 12.	
Tax Computation	11	Tax Rate Schedule—	
	11a	If you itemize deductions, enter total from page 2, Part IV. If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9 or; (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. Deduction under (1) or (2) limited to $1,000 ($500 if married and filing separately). ▶	22,873
	11b	Subtract line 11a from line 9	162,125
	11c	Multiply total number of exemptions on line 4, above, by $600	2,400
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12.	159,725
Tax Credits Payments	12	Tax (from either Tax Table, see line 10, or Tax Rate Schedule, see line 11) ▶	83,39[illegible]
	13	Total credits (from page 2, Part V, line 5) ▶	28[illegible]
	14a	Income tax (subtract line 13 from line 12)	83,11[illegible]
	14b	Tax from recomputing prior year investment credit (attach statement)	32
	15	Self-employment tax (Schedule C-3 or F-1) ▶	
	16	Total tax (add lines 14a, 14b, and 15) ▶	83,143
	17	Total Federal income tax withheld (attach Forms W-2) SCH 2 — 44,030	
	18	1966 Estimated tax payments (include 1965 overpayment allowed as a credit) ▶ 38,750	
	19	Excess F.I.C.A. Tax Withheld (two or more employers—see page 5 of inst.) ▶	
	20	Nonhighway Federal gasoline tax—Form 4136, Reg. Inv.—Form 2439	
	21	Total (add lines 17, 18, 19, and 20)	82,78[illegible]
Tax Due or Refund	22	If payments (line 21) are less than tax (line 16), enter Balance Due. Pay in full with this return ▶	[illegible]
	23	If payments (line 21) are larger than tax (line 16), enter Overpayment ▶	
	24	Amount of line 23 you wish credited to 1967 Estimated Tax	
	25	Subtract line 24 from 23. Apply to: ☐ U.S. Savings Bonds, with excess refunded or ☐ Refund only	

Attach Check or Money Order here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ▶ .... Date ....

If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

Sign here LANIER, GUY, WALKER & CHATFIELD, CINCINNATI, OHIO 45202 Date 4/10/67

Signature of preparer other than taxpayer. Address

PART I. Exemptions Complete only for dependents claimed on line 3b, page 1

(a) NAME (If more space is needed attach schedule)	(b) Relationship	(c) Months lived in your home. If born or died during year write "B" or "D"	(d) Did dependent have income of $600 or more?	(e) Amount YOU furnished for dependent's support. If 100% write "ALL"	(f) Amount furnished by OTHERS including dependent.
1				$	$
2					

3 Total number of dependents listed above. Enter here and on page 1, line 3b ▶▶

PART II. Income from sources other than wages, etc.

1a Dividends and other distributions on stock (Name of payer—write (H), (W), (J), for stock held by husband, wife, or jointly) SEE SCH 3		
Total line 1a ▶▶		18,602
1b Exclusion (see instructions)	200	
1c Capital gain distributions	106	
1d Nontaxable distributions		
1e Total lines 1b, 1c, and 1d		306
1f Taxable dividends (line 1a less line 1e—not less than zero) ▶▶		18,296
2 Interest (name of payer)		
2a Earnings from savings and loan assoc., mutual savings banks, credit unions, etc. SCH 4		
Total line 2a		
2b Interest on bank deposits (other than mutual savings)		
Total line 2b	209	
2c Other interest (bonds, etc.)		
Total line 2c	240	
2d Total interest income (lines 2a, 2b, & 2c) ▶▶		449
3 Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (Sch. B)		-9,760
4 Business income (Schedule C)		-23,078
5 Sale or exchange of property (Schedule D)		-1,000
6 Farm income (Schedule F)		
7 Miscellaneous income (state nature) SCH 8		
Total line 7 ▶▶		91
8 TOTAL (add lines 1f through 7. Enter here and on page 1, line 6) ▶▶		-15,002

PART III. Adjustments

1 "Sick pay" if included in line 5, page 1 (attach Form 2440 or other required statement)	
2 Moving expenses (attach Form 3903)	
3 Employee business expense (attach Form 2106 or other statement)	
4 Payments by self-employed persons to retirement plans, etc. (attach Form 2950SE)	
5 TOTAL ADJUSTMENTS (lines 1 through 4). Enter here and on page 1, line 8	

EXPENSE ACCOUNT INFORMATION—If you had an expense allowance or charged expenses to your employer, check here X and see page 7 of instructions.

PART IV. Itemized deductions—Use only if you do not use tax table or standard deduction.

Medical and dental expense (not compensated by insurance or otherwise)—Attach itemized list. If 65 or over see instructions.

1 Total cost of medicine and drugs	
2 Enter 1% of line 9, page 1	
3 Subtract line 2 from line 1	
4 Other medical, dental expenses (include hospital insurance premiums)	
5 Total (add lines 3 and 4)	
6 Enter 3% of line 9, page 1	
7 Subtract line 6 from line 5; see page 8 of instructions for maximum limitation ▶▶	

Contributions.—Cash—including checks, money orders, etc. (itemize) SEE SCH 9

1 Total cash contributions	40
2 Other than cash (see instructions for required statement). Enter total of such items here.	15,932
3 Carryover from prior years (see page 8 of inst.)	
4 Total contributions (add lines 1, 2, and 3—see instructions for limitation) ▶▶	15,972

Taxes.—Real estate	
State and local gasoline	
General sales (see page 15 of instructions)	
State and local income	
Personal property. SEE SCH 11	
Total taxes ▶▶	3,601
Interest expense.—Home Mortgage	
Other (itemize) SEE SCH 10	
Total interest expense ▶▶	2,975
Miscellaneous deductions.—(see page 9 of instructions) SEE SCH 12	
Total Miscellaneous ▶▶	325
TOTAL DEDUCTIONS (for page 1, line 11a) ▶	22,875

PART V. Credits

1 Retirement income credit (Schedule B)	
2 Investment credit (Form 3468)	288
3 Foreign tax credit (Form 1116)	
4 Tax-free covenant bonds credit	
5 TOTAL CREDITS (add lines 1 through 4). Enter here and on page 1, line 13	288

SCHEDULE B (Form 1040)
U.S. Treasury Department Internal Revenue Service

Supplemental Schedule of Income and Retirement Income Credit

(From pensions and annuities, rents and royalties, partnerships, and estates or trusts)

Attach this schedule to your income tax return, Form 1040

19[illegible]

Name and address as shown on page 1 of Form 1040
EDWIN A AND HELEN B SNOW
HIGHLAND TOWERS, 1071 CELESTIAL STREET
CINCINNATI OHIO 45202

Part I.—PENSION AND ANNUITY INCOME

AMOUNT

A.—General Rule (If you did not contribute to the cost of the pension or annuity, enter the total amount received on line 6 and omit lines 1 through 5.)

1 Investment in contract . . . . .
2 Expected return . . . .
3 Percentage of income to be excluded (line 1 divided by line 2) . . %
4 Amount received this year . . . ●
5 Amount excludable (line 4 multiplied by line 3) . . . .
6 Taxable portion (excess of line 4 over line 5) . .

B.—Special Rule—Where your employer has contributed part of the cost and your own contribution will be recovered tax-free within 3 years. If your cost was fully recovered in prior years, enter the total amount received on line 5 and omit lines 1 through 4.

1 Cost of annuity (amounts you paid) .
2 Cost received tax-free in past years .
3 Remainder of cost (line 1 less line 2).
4 Amount received this year . . . ●
5 Taxable portion (excess, if any, of line 4 over line 3).

Part II.—RENT AND ROYALTY INCOME

1. Kind and location of property	2. Total amount of rents	3. Total amount of royalties	4. Depreciation (explain in Part IV) or depletion (attach computation)	5. Repairs (attach itemized list)	6. Other expenses (attach itemized list)
1 Totals . . . . ●					

2 Net income (or loss) from rents and royalties (column 2 plus column 3 less columns 4, 5, and 6) . . .

Part III.—INCOME OR LOSSES FROM PARTNERSHIPS, ESTATES OR TRUSTS, ETC.

1 Partnerships (name, address, and nature of income) SEE SCHEDULE 5 -9,760

2 Small business corporations (subchapter S—name and address)

3 Estates or trusts (name and address)

Total of Parts I, II, and III (Enter here and on page 2, Part II, line 3, Form 1040) . . . . -9,760

Part IV.—SCHEDULE FOR DEPRECIATION CLAIMED IN PART II ABOVE

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedures 62-21 and 65-13 as well as for those taxpayers who wish to continue using practices authorized prior to these revenue procedures. Where double headings appear use the first heading for depreciation under Revenue Procedures 62-21 and 65-13 and the second heading for other authorized practices.

1. Group and guideline class OR Description of property	2. Cost or other basis at beginning of year OR Cost or other basis	3. Asset additions in year (amount) OR Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life OR Rate (%) or life	8. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)							
Total cost or other basis . . .							

2 Total depreciation (Enter here and in Part II, column 4 above) . . . .

SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Proc. 62-21							
2 Other . . .							

SCHEDULE D (Form 1040)
U.S. Treasury Department
Internal Revenue Service

Gains and Losses From Sales or Exchanges of Property

Attach this schedule to your income tax return, Form 1040

19[illegible]

Name and address as shown on page 1 of Form 1040

EDWIN A AND HELEN B SNOW
HIGHLAND TOWERS, 1071 CELESTIAL STREET
CINCINNATI OHIO 45202

Part I—CAPITAL ASSETS—Short-term capital gains and losses—assets held not more than 6 months

a. Kind of property and how acquired (see instructions for symbols to indicate how acquired—for example, use "B" for stock acquired by exercise of stock option or by employee stock purchase plan)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition	f. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
1						

2 Enter your share of net short-term gain (or loss) from partnerships and fiduciaries . . . .

3 Enter unused short-term capital loss carryover from preceding taxable years (attach statement) . . . . . .

4 Net short-term gain (or loss) from lines 1, 2, and 3 . . . .

Long-term capital gains and losses—assets held more than 6 months (12 months or more for certain livestock)

5 Enter gain from Part II, line 3 . . . .

a.	b.	c.	d.	e.	f.	g.
SEE SCHEDULE 7						-5,623

Total long-term gross sales price . . 788,101

6 Enter the full amount of your share of net long-term gain (or loss) from partnerships and fiduciaries 27

7 Enter unused long-term capital loss carryover from preceding taxable years (attach statement) . . . . .

8 Capital gain dividends . . . . [illegible]

9 Net long-term gain (or loss) from lines 5, 6, 7, and 8 . . . . [illegible]

10 Combine the amounts shown on lines 4 and 9, and enter the net gain (or loss) here . . . . [illegible]

11 If line 10 shows a GAIN—Enter 50% of line 9 or 50% of line 10, whichever is smaller. (Enter zero if there is a loss or no entry on line 9.) (See reverse side for computation of alternative tax) . . . .

12 Subtract line 11 from line 10. Enter here and in Part IV, line 1, on reverse side . . . .

13 If line 10 shows a LOSS—Enter here and in Part IV, line 1, the smallest of the following: (a) the amount on line 10; (b) the amount on page 1, line 11b, Form 1040, computed without regard to capital gains and losses; or (c) $1,000 . [illegible]

Part II—GAIN FROM DISPOSITION OF DEPRECIABLE PROPERTY UNDER SECTIONS 1245 AND 1250—assets held more than 6 months (see instructions for definitions)

Where double headings appear, use the first heading for section 1245 and the second heading for section 1250.

a. Kind of property and how acquired (if necessary, attach statement of descriptive details not shown below—write 1245 or 1250 to indicate type of asset)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis (if not purchased, attach explanation) and expense of sale
1				

f. Depreciation allowed (or allowable) since acquisition		g. Adjusted basis (e less sum of f-1 and f-2)	h. Total gain (d less g)	i. Ordinary gain (lesser of f-2 or h) OR (see instructions)	j. Other gain (h less i)
f-1. Prior to January 1, 1962 OR Prior to January 1, 1964	f-2. After December 31, 1961 OR After December 31, 1963				

2 Total ordinary gain. Enter here and in Part IV, line 2, on reverse side . . . .

3 Total other gain. Enter here and in Part I, line 5; however, if the gains do not exceed the losses when this amount is combined with other gains and losses from section 1231 property enter the total of column j in Part III, line 1

Part III—PROPERTY OTHER THAN CAPITAL ASSETS

a. Kind of property and how acquired (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition	f. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
1 Enter gain from Part II, line 3						
2 Enter your share of non-capital gain (or loss) from partnerships and fiduciaries						
3 Net gain (or loss) from lines 1 and 2. Enter here and in Part IV, line 3.						

Part IV—TOTAL GAINS OR LOSSES FROM SALE OR EXCHANGE OF PROPERTY

1 Net gain (or loss) from Part I, line 12 or 13	-1,000
2 Total ordinary gain from Part II, line 2	
3 Net gain (or loss) from Part III, line 3	
4 Total net gain (or loss), combine lines 1, 2, and 3. Enter here and on page 2, Part II, line 5, Form 1040	-1,000

COMPUTATION OF ALTERNATIVE TAX—It will usually be to your advantage to use the alternative tax if the net long-term capital gain exceeds the net short-term capital loss, or if there is a net long-term capital gain only, and you are filing (a) a separate return with taxable income exceeding $26,000, or (b) a joint return, or as a surviving husband or wife, with taxable income exceeding $52,000, or (c) as a head of household with taxable income exceeding $38,000.

1 Enter the amount from page 1, line 11d, Form 1040	
2 Enter amount from Part I, line 11, on reverse side	
3 Subtract line 2 from line 1	
4 Enter tax on amount on line 3 (use applicable tax rate schedule on page 11 of Form 1040 instructions)	
5 Enter 50% of line 2	
6 Alternative tax (add lines 4 and 5). If smaller than the tax figured on the amount on page 1, line 11d, Form 1040, enter this alternative tax on page 1, line 12, Form 1040 and write "Alternative" to left of entry	

INSTRUCTIONS (References are to the Internal Revenue Code)

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY.—Report details in appropriate part or parts.

In column (a) of Parts I, II, and III use the following symbols to indicate how the property was acquired: "A" for purchase on the open market; "B" for exercise of stock option or through employee stock purchase plan; "C" for inheritance or gift; "D" for exchange involving carryover of prior asset basis; and "E" for other.

"Capital assets" defined.—The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business) but does NOT include—

(a) stock in trade or other property of a kind properly includible in his inventory if on hand at the close of the taxable year;
(b) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;
(c) property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167;
(d) real property used in the trade or business of the taxpayer;
(e) certain government obligations issued on or after March 1, 1941, at a discount, payable without interest and maturing at a fixed date not exceeding 1 year from date of issue;
(f) certain copyrights, literary, musical, or artistic compositions, etc.; or
(g) accounts and notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property referred to in (a) or (b) above.

Special rules apply to dealers in securities for determining capital gain or ordinary loss on the sale or exchange of securities. Certain real property subdivided for sale may be treated as capital assets. Sections 1236 and 1237.

If the total distributions to which an employee is entitled under an employees' pension, bonus, or profit-sharing trust plan, which is exempt from tax under section 501(a), are paid to the employee in one taxable year, on account of the employee's separation from service, the aggregate amount of such distribution, to the extent it exceeds the amounts contributed by the employee, shall be treated as a long-term capital gain. (See section 402(a).)

Gain on sale of depreciable property between husband and wife or between a shareholder and a "controlled corporation" shall be treated as ordinary gain.

Gains and losses from transactions described in section 1231 (see below) shall be treated as gains and losses from the sale or exchange of capital assets held for more than 6 months if the total of these gains exceeds the total of these losses. If the total of these gains does not exceed the total of these losses, such gains and losses shall not be treated as gains and losses from the sale or exchange of capital assets. Thus, in the event of a net gain, all these transactions should be entered in Part I of Schedule D. In the event of a net loss, all these transactions should be entered in Part III of Schedule D, or in other applicable schedules on Form 1040.

Section 1231 deals with gains and losses arising from—

(a) sale, exchange, or involuntary conversion, of land (including in certain cases unharvested crops sold with the land) and depreciable property if they are used in the trade or business and held for more than 6 months.
(b) sale, exchange, or involuntary conversion of livestock held for draft, breeding, or dairy purposes (but not including poultry) **and held for 1 year or more.**
(c) the cutting of timber or the disposal of timber, coal, or domestic iron ore, to which section 631 applies, and
(d) the involuntary conversion of capital assets held more than 6 months.

See sections 1231 and 631 for specific conditions applicable.

Gain from disposition of depreciable property under sections 1245 and 1250—assets held more than 6 months (Part I.).—*Report any gain from such property held for 6 months or less in Part III.)* Except as provided below section 1245 property means depreciable (a) personal property (other than livestock) including intangible personal property; and (b) tangible real property (except for buildings and their structural components) if used as an integral part of manufacturing, production, or extraction, or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or used as a research or storage facility in connection with these activities.

Except as provided below section 1250 property means depreciable real property (other than section 1245 property).

See sections 1245(b) and 1250(d) for exceptions and limitations involving: (a) disposition by gift; (b) transfers at death; (c) certain tax-free transactions; (d) like kind exchanges, involuntary conversions; (e) sales or exchanges to effectuate FCC policies and exchanges to comply with S.E.C. orders; (f) property distributed by a partnership to a partner; and (g) disposition of principal residence (section 1250 only).

(Instructions continued on reverse side of duplicate)

SCHEDULE C (Form 1040)
U.S. Treasury Department
Internal Revenue Service

Profit (or Loss) From Business or Profession

(Sole Proprietorships)

(Compute social security self-employment tax on Schedule C-3 (Form 1040))

19[illegible]/[illegible]

Attach this schedule to your income tax return, Form 1040 — Partnerships, joint ventures, etc., must file on Form 1065

Name and address as shown on page 1, Form 1040

EDWIN A AND HELEN B SNOW
HIGHLAND TOWERS, 1071 CELESTIAL STREET
CINCINNATI OHIO 45202

A Principal business activity THOROUGHBRED RACEHORSE OPER ; product 7388
(See separate instructions) (For example: retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture; etc.)

B Business name ______ C Employer Identification Number ______

D Business location ______ (Number and street or rural route) (City or post office and State) (ZIP code)

E Indicate method of accounting: (1) [X] cash; (2) [ ] accrual; (3) [ ] other.

1	Gross receipts or gross sales $ ______ Less: Returns and allowances $ ______		$
2	Inventory at beginning of year (if different than last year's closing inventory attach explanation)		
3	Merchandise purchased $ ______, less cost of any items withdrawn from business for personal use $ ______		
4	Cost of labor (do not include salary paid to yourself)		
5	Material and supplies		
6	Other costs (explain in Schedule C-1)		
7	Total of lines 2 through 6		
8	Inventory at end of this year		
9	Cost of goods sold (line 7 less line 8)		
10	Gross profit (subtract line 9 from line 1)		
	OTHER BUSINESS DEDUCTIONS		
11	Depreciation (explain in Schedule C-2)		
12	Taxes on business and business property (explain in Schedule C-1)		
13	Rent on business property		
14	Repairs (explain in Schedule C-1)		
15	Salaries and wages not included on line 4 (exclude any paid to yourself)		
16	Insurance	805	
17	Legal and professional fees		
18	Commissions		
19	Amortization (attach statement)		
20	Retirement plans, etc. (other than your share—see separate instructions)		
21	Interest on business indebtedness		
22	Bad debts arising from sales or services		
23	Losses of business property (attach statement)		
24	Depletion of mines, oil and gas wells, timber, etc. (attach schedule)		
25	Other business expenses (explain in Schedule C-1)	3,673	
26	Total of lines 11 through 25		4,483
27	Net profit (or loss) (subtract line 26 from line 10). Enter here; in Schedule C-3, line 1; and on page 2, Part II, line 4, Form 1040		-4,483

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 25

Line No.	Explanation	Amount	Line No.	Explanation	Amount
		$			$
			SEE SCHEDULE 6		

SCHEDULE C-2. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 11

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedures 62-21 and 65-13 as well as for those taxpayers who wish to continue using practices authorized prior to these revenue procedures. Where double headings appear use the first heading for depreciation under Revenue Procedures 62-21 and 65-13 and the second heading for other authorized practices.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)							
2 Totals							
3 Less: Amount of depreciation claimed elsewhere in Schedule C							
4 Balance—Enter here and on page 1, line 11							

SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Proc. 62-21							
2 Other							

EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 27, page 1, is less than $10,000. See separate instructions for Schedule C, for definition of "expense account."

Name	Expense account	Salaries and wages
Owner		XXXXXXXXXXXX
1		
2		
3		
4		
5		

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

F A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was your principal business.) ☐ YES ☒ NO

G Vacations for you or members of your family, or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☒ NO

H The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by you, your customers, employees, or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☒ NO

I The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☒ NO

ADDITIONAL INFORMATION

1 Was there any substantial change in the manner of determining quantities, costs, or valuations between the opening and closing inventories? ☐ YES ☐ NO. If "Yes," attach explanation.

2 Are you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1966? (See last paragraph of separate instructions for Schedule C.) ☐ YES ☒ NO. If "Yes," where were they filed? ____

SCHEDULE C (Form 1040)
U.S. Treasury Department Internal Revenue Service

Profit (or Loss) From Business or Profession
(Sole Proprietorships)
(Compute social security self-employment tax on Schedule C-3 (Form 1040))

19 11

Attach this schedule to your income tax return, Form 1040 — Partnerships, joint ventures, etc., must file on Form 1065

Name and address as shown on page 1, Form 1040
EDWIN A AND HELEN B SNOW
HIGHLAND TOWERS, 1071 CELESTIAL STREET
CINCINNATI OHIO 45202

A Principal business activity OIL OPER MNGD/STONE OIL CO ; product 130 0
(See separate instructions) (For example: retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture; etc.)

B Business name ______ C Employer Identification Number ______

D Business location ______ (Number and street or rural route) (City or post office and State) (ZIP code) 3

E Indicate method of accounting: (1) ☐ cash; (2) ☐ accrual; (3) ☐ other.

NR

1	Gross receipts or gross sales $ 8,385 Less: Returns and allowances $		$ 8,385
2	Inventory at beginning of year (if different than last year's closing inventory attach explanation)		
3	Merchandise purchased $ ______, less cost of any items withdrawn from business for personal use $ ______		
4	Cost of labor (do not include salary paid to yourself)		
5	Material and supplies		
6	Other costs (explain in Schedule C-1)		
7	Total of lines 2 through 6		
8	Inventory at end of this year		
9	Cost of goods sold (line 7 less line 8)		
10	Gross profit (subtract line 9 from line 1)		8,385
	OTHER BUSINESS DEDUCTIONS		
11	Depreciation (explain in Schedule C-2)	2,298	
12	Taxes on business and business property (explain in Schedule C-1)		
13	Rent on business property		
14	Repairs (explain in Schedule C-1)		
15	Salaries and wages not included on line 4 (exclude any paid to yourself)		
16	Insurance		
17	Legal and professional fees		
18	Commissions		
19	Amortization (attach statement)		
20	Retirement plans, etc. (other than your share—see separate instructions)		
21	Interest on business indebtedness		
22	Bad debts arising from sales or services		
23	Losses of business property (attach statement)		
24	Depletion of mines, oil and gas wells, timber, etc. (attach schedule)	1,605	
25	Other business expenses (explain in Schedule C-1)	23,077	
26	Total of lines 11 through 25		26,980
27	Net profit (or loss) (subtract line 26 from line 10). Enter here; in Schedule C-3, line 1; and on page 2, Part II, line 4, Form 1040		-18,595

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 25

Line No.	Explanation	Amount	Line No.	Explanation	Amount
		$			$
			SEE	SCHEDULE 6	

SCHEDULE C-2. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 11

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedures 62-21 and 65-13 as well as for those taxpayers who wish to continue using practices authorized prior to these revenue procedures. Where double headings appear use the first heading for depreciation under Revenue Procedures 62-21 and 65-13 and the second heading for other authorized practices.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)							
2 Totals							2,298
3 Less: Amount of depreciation claimed elsewhere in Schedule C							
4 Balance—Enter here and on page 1, line 11							2,298

SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Proc. 62-21							
2 Other							

EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 27, page 1, is less than $10,000. See separate instructions for Schedule C, for definition of "expense account."

Name	Expense account	Salaries and wages
Owner		XXXXXXXXXXXX
1		
2		
3		
4		
5		

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

F A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was your principal business.) ☐ YES ☒ NO

G Vacations for you or members of your family, or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☒ NO

H The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by you, your customers, employees, or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☒ NO

I The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☒ NO

ADDITIONAL INFORMATION

1 Was there any substantial change in the manner of determining quantities, costs, or valuations between the opening and closing inventories? ☐ YES ☐ NO. If "Yes," attach explanation.

2 Are you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1966? (See last paragraph of separate instructions for Schedule C.) ☐ YES ☒ NO. If "Yes," where were they filed?

FORM 3468 (REVISED)
U.S. Treasury Department
Internal Revenue Service

Computation of Investment Credit

1966

TO BE ATTACHED TO YOUR TAX RETURN
For the year January 1–December 31, 1966, or other taxable year beginning ...., 1966, ending ...., 19......

Name and address
EDWIN A AND HELEN B SNOW
HIGHLAND TOWERS, 1071 CELESTIAL STREET
CINCINNATI OHIO 45202

1 Investment in new and used property including investment in suspension period property
NOTE: Include your share of investment in property by a partnership, estate, trust, small business corporation, or lessor.

Type of property	Line	(1) Life years	(2) Cost or basis	(3) Applicable percentage	(4) Investment (Column 2 x column 3)
NEW PROPERTY	(a)	4 or more but less than 6		33⅓	
	(b)	6 or more but less than 8		66⅔	
	(c)	8 or more		100	
USED PROPERTY (See instructions for dollar limitation)	(d)	4 or more but less than 6		33⅓	
	(e)	6 or more but less than 8		66⅔	
	(f)	8 or more		100	

2 Total investment—Add lines 1(a) through (f) . . . .

3 (a) Amount of investment on line 2 which is attributable to suspension period property . . . .

(b) Amount of exemption from suspension period property (amount of investment in suspension period property in column 2, line 1, which is selected to be treated as qualified property—not to exceed $20,000) . . . .

(c) Enter in column 2 below the amount of investment on line 3(b) according to life years:

(1) Life years	(2) Cost or basis	(3) Applicable percentage	(4) (Column 2 x column 3)
4 or more but less than 6		33⅓	
6 or more but less than 8		66⅔	
8 or more		100	

(d) Total of column 4 . . . .

4 Line 3(a) less line 3(d) . . . .

5 Total qualified investment—Line 2 less line 4 . . . .

6 Tentative investment credit—7% of line 5 (3% for public utility property) . . . . . .

7 Carryback and carryover of unused credit(s) (attach computation) . . . . . .

8 TOTAL—Add lines 6 and 7 . . . . 2[illegible]

COMPUTATION OF TAX FOR PURPOSES OF LIMITATION

9 (a) Individuals—Enter amount from line 12, page 1, Form 1040 . . . .
(b) Estates and trusts—Enter amount from line 25 or 26, page 1, Form 1041 83,392
(c) Corporations—Enter amount from line 7, Tax Computation Schedule, Form 1120 . . . . . .

10 Individuals, estates and trusts: (a) Foreign tax credit . . . .
(b) Retirement income credit . . . . . .

11 Total—Add lines 10(a) and (b) . . . .

12 Line 9 less line 11 83,392

LIMITATION BASED ON AMOUNT OF TAX

(Married persons filing separately, affiliated groups, estates and trusts, see instruction 13)

13 (a) Enter amount on line 12 or $25,000, whichever is lesser 25,000
(b) If line 12 is in excess of $25,000, enter 25% of the excess . . . . . . 14,[illegible]

14 Total—Add lines 13(a) and (b) . . . . 39,6[illegible]

15 Less 7% of line 4 (3% for public utility property) . . . .

16 Line 14 less line 15 . . . . 39,6[illegible]

17 Investment credit—Enter amount on line 8 or line 16, whichever is lesser . . . . 2[illegible]

SCHEDULE A

If any part of your investment in 1 above was made by a partnership, estate, trust, small business corporation, or lessor complete the following:

Name (Partnership, estate, trust, etc.)	Address	Property New	Property Used	Life years
		$	$	

SCHEDULE 1 - EXEMPTIONS

TERRY
STEVE

SCHEDULE 2 - WAGES

EMPLOYER'S NAME AND ADDRESS	FICA	INC. TAX WITHHELD	WAGES ETC.
(H) THE PROCTOR + GAMBLE CO, CINTI, OHIO	277	44,030	200,000
	277**	44,030**	200,000**

SCHEDULE 3 - DIVIDEND INCOME

	QLFYING	NON QLFYING	CAPITAL GAIN	NON TAXABLE
(H) PROCTOR + GAMBLE CO	13,550			
(W) PROCTOR + GAMBLE CO	1,500			
(H) OCCIDENTAL PETROLEUM CO	1,082			
(H) BOISE VALLEY				
(H) BROADCASTERS	867			
(H) NATL CASH REGISTER	1,260			
(W) ALBERTSONS INC	89			
(W) NATL SECURITIES SER	36		106	
(W) PROPHETS INVESTMENT				
(W) PARTNERSHIP	89			
(H) FOREST HILLS PULB CO	20			
(H) ACESS CORP	3			
	18,496**	0**	106**	0**

SCHEDULE 4 - INTEREST INCOME

INTEREST ON BANK DEPOSITS

FIRST NATL BK CINTI	209
	209**

EDWIN A AND HELEN B SNOW 3713-48

1966 FEDERAL INCOME TAX SCHEDULE PAGE 2

SCHEDULE 4 - INTEREST INCOME (CONTINUED)

OTHER INTEREST	
OCCIDENTAL PETROLEUM CO (DEB)	234
PROPHETS INVESTMENT PARTNERSHIP	6
	240**

SCHEDULE 5 - PARTNERSHIP INCOME

ECHO DEVELOPMENT CO, CINTI, O	-563
COURIER ENTERPRISES, CINTI, O	-2
BURNS INVESTMENT CO, CINTI, O	-9,195
	-9,760**

EDWIN A AND HELEN B SNOW - 3713-48 -

1966 FEDERAL INCOME TAX SCHEDULE PAGE 3

SCHEDULE 6 - PROFIT OR LOSS FROM BUSINESS OR PROFESSION

BUSINESS NAME

OTHER BUSINESS EXPENSES (LINE 25)

INTANGIBLE DRILLING AND DEVELOPMENT COSTS	17,610	
OPERATING AND OTHER EXPENSES	4,895	
MANAGEMENT FEE	572	
TOTAL OTHER BUSINESS EXPENSES (LINE 25)		23,077**

DWIN A AND HELEN B SNOW 3713-43

1966 FEDERAL INCOME TAX SCHEDULE PAGE 4

CHEDULE 6 - PROFIT OR LOSS FROM BUSINESS OR PROFESSION (CONTINUED)

USINESS NAME

THER BUSINESS EXPENSES (LINE 25)

RACE NOMINATIONS	195	
BOARD, BREAKING (FOREST RETREAT FARM)	634	
BOARD, TRAING (MAX HIRSCH)	2,849	
OTAL OTHER BUSINESS EXPENSES (LINE 25)		3,678**

CHEDULE 7 - LONG-TERM CAPITAL GAINS AND LOSSES

ESCRIPTION	DATE ACQUIRED	DATE SOLD	SALES PRICE	ACCUM. DEP	COST OR OTHER BASIS	GAIN OR LOSS
330 SHS ALBERTSONS INC	10/31/63	7/31/66	4,221		1,986	2,235
400 SHS PROCTER + GAMBLE CO	10/18/61	7/20/66	26,300		13,800	12,500
600 SHS PROCTER + GAMBLE CO	10/17/63	6/30/66	37,950		20,700	17,250
1500 SHS AIR EXP INTL CORP	6/17/65	12/ 1/66	10,339		47,947	-37,608
OTAL LONG TERM LOSS						-5,623**

CHEDULE 8 - MISCELLANEOUS INCOME

PROCTER + GAMBLE CO, GROUP LIFE INS PREM	91
	91**

DWIN A AND HELEN B SNOW 3713-48

1966 FEDERAL INCOME TAX SCHEDULE PAGE 5

CHEDULE 9 - ITEMIZED CONTRIBUTIONS

ON-CASH

FAIR MKT V 100 SHS P + G STK ON 1/27/66 AT 69.6875 6,96875		
FIAR MKT V 100 SHS P+G STK ON 7/11/66 AT $64.4375 $6,443.75		
DONATED TO THE BEDFORD FOUNDATION	13,412	
OTAL CONT. SUBJECT 20 PCT. LIMIT		13,412**
MISC. ORGANIZED CHARITIES	15	
WALNUT HILL H S	25	

ON-CASH

FAIR MKT V INNOCENTI SPORTS CAR $2,100		
PAINTING SUNFLOWERS 150		
BOLBS FROZEN RAINBOW TROUT 45		
DONATED TO ZOOAUC CINTI OHIO	2,295	
FAIR MKT V. USED ARTICLES AND PAINTINGS DONATED TO GARDE CENTER CHRISTMAS CARAVAN	225	
OTAL CONT. SUBJECT 30 PCT. LIMIT		2,560**

CHEDULE 10 - ITEMIZED INTEREST EXPENSE

FIFTH THIRD UNION TRUST CO	2,975
	2,975**

EDWIN A AND HELEN B SNOW — 3713-48

1966 FEDERAL INCOME TAX SCHEDULE PAGE 6

SCHEDULE 11 - ITEMIZED TAX EXPENSE

STATE AND LOCAL GASOLINE	245
STATE AND LOCAL INCOME	2,000
PERSONAL PROPERTY	1,033
SALES TAX (INCL AUTO $62 JEWELRY $111)	323
	3,601**

SCHEDULE 12 - ITEMIZED MISCELLANEOUS DEDUCTIONS

TAX COUNSEL	325
	325**

Name and address of taxpayer

EDWIN A. SNOW

HIGHLAND TOWERS

1071 CELESTIAL STREET

CINCINNATI, OHIO 45202

Form 1040
Attachment pursuant to
Reg. Sec. 1.61-15(c)(3)

Pursuant to the requirements of Regulation Section 1.61-15(c)(3) relating to information required upon receipt of a "non-qualified stock option" during calendar year 1966, the following information is furnished:

1. Name and address of the taxpayer:

   EDWIN A. SNOW
   HIGHLAND TOWERS, 1071 CELESTIAL STREET
   CINCINNATI, OHIO 45202

2. Description of the stock subject to the option: 2,000 shares of common stock of The Procter & Gamble Company, Cincinnati, Ohio.

3. Period during which the option may be exercised: No part of the option can be exercised before October 11, 1967, at which time 20% of the option may be exercised. An additional 20% of the option becomes exercisable on October 11 of each of the next four years. The option expires on October 11, 1976.

4. Whether the option had a readily ascertainable fair market value when granted: Company's counsel has advised that the option does not have a readily ascertainable fair market value as defined by the Internal Revenue Service.

5. Whether the option was granted in payment of an amount constituting compensation: Company's counsel has advised that the option was granted in payment of an amount constituting compensation as defined by the Internal Revenue Service.

E. A. SNOW

THE STONE OIL COMPANY
SUMMARY OF RESULTS FOR FEDERAL INCOME TAX PURPOSES
OF JOINT VENTURE OIL OPERATIONS FOR THE YEAR 1966

come tax data for Schedule C - Form 1040 (with line number indicated):

ross income (line 1)		$	8,385.
ductions:			
Operating and other expenses (line 6)	$ 4,895.		
Intangible drilling and development costs (line 25)	17,610.		
Depreciation (line 11)	2,298.		
Depletion (line 24)	1,605.		26,408.
			(18,023.)
nagement fee - The Stone Oil Company (line 25)			572.
Net profit or (loss) from operations (line 27)		$	(18,595.)

pplementary income tax data:

in or (loss) from sale of property:

Ordinary gain (Section 1245)	$	---
Long-term gain (Section 1231)	$	---
estment tax credit - prior to October 10, 1966	$	288.
estment tax credit - special exemption for suspension period property	$	---
capture of prior year investment tax credit (1962)	$	---
capture of prior year investment tax credit (1963)	$	---
capture of prior year investment tax credit (1964)	$	22.
capture of prior year investment tax credit (1965)	$	10.

al additions of used tangible personal property taken into considera- n in computing property additions eligible for the investment tax credit:

Prior to October 10, 1966	$	24.
Special exemption for suspension period property	$	---

In accordance with the option granted by Section 263 (c) of the 1954 rnal Revenue Code, taxpayer hereby elects to treat as expense all in- gible costs incurred in the drilling of productive wells and in the prepa- ion of wells for the production of oil and gas.

E. A. Snow

INTEREST OWNED IN OIL VENTURES

MANAGED BY THE STONE OIL COMPANY

Program and Fund	W. I. Owned	Interest In Fund
1964 Program		
2, 3 & 4 - 64	.600	.800
1965 Program		
1 - 65	.675	.900
2 - 65	1.080	1.440
3 & 4 - 65	1.000	1.333
1966 Program	1.200	1.600

FORM 1065

U.S. Treasury Department
Internal Revenue Service

U.S. Partnership Return of Income

(To be filed also by syndicates, pools, joint ventures, etc.)

FOR CALENDAR YEAR 1966 or other taxable year beginning August 1, 1966, and ending December 31, 1966

(PLEASE TYPE OR PRINT)

1966

A Date business commenced: August 1, 1966

B Principal business activity (See General Inst. K)

C Principal product or service

Name: BURNS INVESTMENT COMPANY

Number and street: 8901 BLUE ASH ROAD

City or town and State: CINCINNATI, OHIO 45242 ZIP code

D Employer identification No.: No. Applied for

E County in which located: HAMILTON

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction R.

INCOME

1	Gross receipts or gross sales .... Less: Returns and allowances	
2	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	
3	Gross profit	
4	Income (loss) from other partnerships, syndicates, etc. (attach statement)	
5	Nonqualifying dividends (attach list—see Instruction 5)	
6	Interest	
7	Rents (Schedule B)	
8	Royalties (attach schedule)	
9	Net farm profit (loss) (Schedule F, Form 1040)	
10	Net gain (loss) from sale or exchange of property other than capital assets (line 16, Schedule D, Form 1065)	
11	Other income (attach schedule)	
12	TOTAL income (lines 3 through 11)	

DEDUCTIONS

13	Salaries and wages (other than to partners)	
14	Payments to partners—salaries and interest	
15	Rent	
16	Interest (Schedule C)	
17	Taxes (Schedule C)	
18	Losses by fire, storm, shipwreck, other casualty or theft (attach statement)	
19	Bad debts (Schedule H if reserve method is used)	
20	Repairs	
21	Depreciation (Schedule I)	
22	Amortization (attach schedule)	
23	Depletion (attach schedule)	
24	Retirement plans, etc. (other than for partners—see instructions)	
25	Other deductions (Schedule J)	36,780.44
26	TOTAL deductions (lines 13 through 25)	36,780.44
27	Ordinary income (loss) (line 12 less line 26)	(36,780.44)

F Is any member of the partnership related by blood or marriage to any other member? ☐ YES ☒ NO

G Is any member of the partnership a trust for the benefit of any person related by blood or marriage to any other member? ☐ YES ☒ NO

H Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act? ☐ YES ☒ NO

If "YES," see General Instruction P and enter appropriate amount here .... $........

I Did you claim a deduction for expenses connected with: (If answer to any question is "Yes," check applicable boxes within that question.)

1 A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where operation of facility was the partnership's principal business.) ☐ YES ☒ NO

2 Vacations for partners or members of their families or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☒ NO

3 The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by partners, customers, employees, or members of their families? (Other than use by partners or employees while in business travel status.) ☐ YES ☒ NO

4 Attendance of members of partners' families or your employees' families at conventions or business meetings? ☐ YES ☒ NO

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here .... Date ....
Signature of partner or member

Sign here LANIER, GUY, WALKER & CHATFIELD CINCINNATI, OHIO 45202 3/28/67
Signature of preparer other than partner or member — Address — Date

Typed
Read by
Proofed by
Approved by

16—79290—1

BURNS INVESTMENT COMPANY

8901 BLUE ASH ROAD

CINCINNATI, OHIO 45242

FORM 1065

YEAR 1966

Other Deductions

Engineering Services (Research & Development)	$36,780.44

Election Under Section 174

Burns Investment Company hereby elects to expense in the current taxable year - its first taxable year-research and development expenses pursuant to Section 174 (a).

Schedule I—DEPRECIATION. (See Instruction 21)

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedures 62-21 and 65-13 as well as for those taxpayers who wish to continue using practices authorized prior to these revenue procedures. Where double headings appear use the first heading for depreciation under Revenue Procedures 62-21 and 65-13 and the second heading for other authorized practices.

1. Group and guideline class —OR— Description of property	2. Cost or other basis at beginning of year —OR— Cost or other basis	3. Asset additions in year (amount) —OR— Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life —OR— Rate (%) or life	8. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)							
2 Totals							
3 Less: Amount of depreciation claimed on line 1 above and in Schedules A and B							
4 Balance—Enter here and on page 1, line 21							

SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Proc. 62-21							
2 Other							

Schedule J—OTHER DEDUCTIONS. (See Instruction 25)

Explanation	Amount	Explanation	Amount
		Total (enter here and on line 25, page 1)	

Schedule K—PARTNERS' SHARES OF INCOME, CREDITS, AND DEDUCTIONS

1. State name and address of each partner. (Designate nonresident aliens, if any.) Where return of partner or member is filed in another internal revenue district, specify district	2. Social Security number	3. Percentage of time devoted to business	4. Ordinary income (loss) (line 27, page 1)	5. Additional first-year depreciation
(a)				
(b) SCHEDULE ATTACHED				
(c)				
(d)				
(e)				
Totals				

Continuation of Schedule K

	6. Payments to partners—salaries and interest (line 14, page 1)	7. Qualifying dividends (attach list)	8. Net short-term gain (loss) from sale or exchange of capital assets (line 9, Schedule D)	9. Net long-term gain (loss) from sale or exchange of capital assets (line 13, Schedule D)	10. Net gain (loss) under section 1231 (line 6, Schedule D)	11. Net earnings from self-employment (line 10, Schedule N)	12. Expense account allowance (see instructions)
(a)							
(b)							
(c)							
(d)							
(e)							
Totals							

BURNS INVESTMENT COMPANY

8901 BLUE ASH ROAD

CINCINNATI, OHIO 45242

FORM 1065

YEAR 1966

SCHEDULES K & M

	Ordinary Loss	Capital 8/1/66	Ordinary Loss	Capital 12/31/66
David H. Trott 3351 Slettinius Ave. Cincinnati, Ohio 45208				
Eugene W. Gilson c/o Procter & Gamble Co. P.O. Box 599 Cincinnati, Ohio 45201	$(18,390.22)	$20,000.00	$(18,390.22)	$1,609.78
Thomas J. Klinedinst 2531 Observatory Ave. Cincinnati, Ohio 45208	(9,195.11)	10,000.00	(9,195.11)	804.89
E.A. Snow Highland Towers Cincinnati, Ohio 45202	(9,195.11)	10,000.00	(9,195.11)	804.89
TOTAL	$(36,780.44)	$40,000.00	$(36,780.44)	$3,219.56

Schedule L—BALANCE SHEETS

ASSETS	Beginning of taxable year Amount	Beginning of taxable year Total	End of taxable year Amount	End of taxable year Total
1 Cash				3,219.56
2 Trade notes and accounts receivable				
(a) Less allowance for bad debts				
3 Inventories				
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)				
6 Mortgage and real estate loans				
7 Other investments (attach schedule)				
8 Buildings and other fixed depreciable assets				
(a) Less accumulated depreciation				
9 Depletable assets				
(a) Less accumulated depletion				
10 Land (net of any amortization)				
11 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
12 Other assets (attach schedule)				
13 Total assets				3,219.56
LIABILITIES AND CAPITAL				
14 Accounts payable				
15 Mortgages, notes, and bonds payable in less than 1 year				
16 Other current liabilities (attach schedule)				
17 Mortgages, notes, and bonds payable in 1 year or more				
18 Other liabilities (attach schedule)				
19 Partners' capital accounts				3,219.56
20 Total liabilities and capital				3,219.56

Schedule M—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS

	1. Capital account at beginning of year	2. Capital contributed during year	3. Income not included in column 4 plus nontaxable income	4. Ordinary income (loss) from line 27, page 1	5. Losses not included in column 4, plus unallowable deductions	6. Withdrawals and distributions	7. Capital account at end of year
(a)							
(b)							
(c)							
(d)			SCHEDULE ATTACHED				
(e)							
Totals							

Schedule N—COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT. (See instruction for Schedule N)

1 Ordinary income increased by casualty losses (line 27 plus line 18, page 1)		
2 Add: Payments to partners—salaries and interest (line 14, page 1)		
3 Net loss from sale or exchange of property other than capital assets (line 10, page 1)		
4 Total		
5 Less: Portion of line 4, page 1, which does not constitute net earnings from self-employment		
6 Nonqualifying dividends (line 5, page 1)		
7 Interest (see instructions)		
8 Net rentals from real estate		
9 Net gain from sale or exchange of property other than capital assets (line 10, page 1)		
10 Net earnings from self-employment. Enter in column 11, Schedule K		

☆☆☆☆ U.S. GOVERNMENT PRINTING OFFICE : 1966—O-221-807 16—79290-1 GPO

FORM **1065**
U.S. Treasury Department
Internal Revenue Service

U.S. Partnership Return of Income

FOR CALENDAR YEAR 1967 or other taxable year beginning ...., 1967, and ending ...., 19......

1967

A Employer Identification No. 31-6067071	Name BURNS INVESTMENT COMPANY	D Principal business activity (See General Instr. K)
B County in which located HAMILTON	Number and street 5240 WOOSTER ROAD	E Principal product or service
C Date business commenced August 1, 1966	City or town and State CINCINNATI, OHIO — ZIP code 45226	

F Was an Employer's Quarterly Federal Tax Return, Form 941, filed for this business for any quarter in 1967? . . . . . ☐ Yes ☒ No

G Is this business located within the boundaries of the city, town, etc., indicated above? . . . . . ☒ Yes ☐ No

H Was this partnership in business at the end of 1967? ☐ Yes ☐ No; I How many months in 1967 was this partnership in business? 12

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction R.

INCOME

Line	Item	Amount
1	Gross receipts or gross sales .... Less: Returns and allowances	NONE
2	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	
3	Gross profit	
4	Income (loss) from other partnerships, syndicates, etc. (attach statement)	
5	Nonqualifying dividends (attach list—see Instruction 5)	
6	Interest	
7	Rents (Schedule B)	
8	Royalties (attach schedule)	
9	Net farm profit (loss) (Schedule F, Form 1040)	
10	Net gain (loss) from sale or exchange of property other than capital assets (line 16, Schedule D, Form 1065)	
11	Other income (attach schedule)	
12	TOTAL income (lines 3 through 11)	NONE

DEDUCTIONS

Line	Item	Amount
13	Salaries and wages (other than to partners)	
14	Payments to partners—salaries and interest	
15	Rent	
16	Interest (Schedule J)	
17	Taxes (Schedule J)	
18	Losses by fire, storm, shipwreck, other casualty or theft (attach statement)	
19	Bad debts (Schedule H if reserve method is used)	
20	Repairs	
21	Depreciation (Schedule I)	
22	Amortization (attach schedule)	
23	Depletion (attach schedule)	
24	Retirement plans, etc. (other than for partners—see Instruction 24)	
25	Other deductions (Schedule J)	
26	TOTAL deductions (lines 13 through 25)	
27	Ordinary income (loss) (line 12 less line 26)	NONE

Schedule A—COST OF GOODS SOLD

Line	Item	Amount
1	Inventory at beginning of year (if different from last year's closing inventory, attach explanation)	
2	Purchases .... Less: Cost of items withdrawn for personal use	
3	Cost of labor	
4	Material and supplies	
5	Other costs (attach schedule)	
6	Total of lines 1 through 5	
7	Less: Inventory at end of year	
8	Cost of goods sold. Enter here and on line 2 above (Method of inventory valuation ....)	

Client No. ....
Prepared by ....
Copies to be typed ....
Typed by ....
Read by ....
Folded by ....
Approved by ....

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

▷ .... Signature of partner or member .... Date

▷ LANIER, GUY, WALKER & CHATFIELD — CINCINNATI, OHIO 45202 — 4/6/68

Signature of preparer other than partner or member — Address — Date

c69—16—79327-1

Schedule K—PARTNERS' SHARES OF INCOME, CREDITS, DEDUCTIONS, ETC.

1. Give name, address, and social security number of each partner. (Designate nonresident aliens, if any.) Where return of partner or member is filed in another Internal Revenue district or in an Internal Revenue service center, specify district or service center.	2. Percentage of time devoted to business	3. COST OR BASIS OF INVESTMENT IN PROPERTY			Suspension period property	
		(i) Life Years	(ii) Basis of new property	(iii) Cost of used property	(iv) Included in col. (ii) & (iii)	(v) Amount in col. (iv) selected to be exempt
(a)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(b) (Schedule Attached)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(c)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(d)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(e)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
Totals						

	4. Ordinary income (loss) (line 27, page 1)	5. Additional first-year depreciation	6. Payments to partners—salaries and interest (line 14, page 1)	7. Qualifying dividends (attach list)	8. Net short-term gain (loss) from sale or exchange of capital assets (line 9, Schedule D)
(a)					
(b)					
(c)					
(d)					
(e)					
Totals					

	9. Net long-term gain (loss) from sale or exchange of capital assets (line 13, Schedule D)	10. Net gain (loss) under section 1231 (line 6, Schedule D)	11. Net earnings from self-employment (line 10, Schedule N)	12. Contributions (see Sch. K Instructions)	13. Expense account allowance (see Sch. K instructions)
(a)					
(b)					
(c)					
(d)					
(e)					
Totals					

NOTE: See the instructions for other items required to be reported separately.

J Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? Yes ☐ No ☒. If "Yes," attach explanation.

K Were you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1967? Yes ☐ No ☒

If "Yes," where were they filed? ....

L Is any member of the partnership related by blood or marriage to any other member? . . . ☐ YES ☒ NO

M Is any member of the partnership a trust for the benefit of any person related by blood or marriage to any other member? . ☐ YES ☒ NO

N Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act? . . . ☐ YES ☒ NO

If "YES," see General Instruction P and enter appropriate amount here . . . . $............

O Did you claim a deduction for expenses connected with: (If answer to any question is "Yes," check applicable boxes within that question.)

1 A hunting lodge . . . ☐, resort property . . . . ☐, working ranch or farm . ☐, pleasure boat or yacht . . ☐, fishing camp . . . . ☐, or other similar facility . . ☐? (Other than where operation of facility was the partnership's principal business.). . . . . ☐ YES ☒ NO

2 Vacations for partners or members of their families or employees or members of their families? (Other than vacation pay reported on Form W-2.) . . . . . ☐ YES ☒ NO

3 The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by partners, customers, employees, or members of their families? (Other than use by partners or employees while in business travel status.) . . . . ☐ YES ☒ NO

4 Attendance of members of partners' families or your employees' families at conventions or business meetings? ☐ YES ☒ NO

E.I. NO. 31-6067071

BURNS INVESTMENT COMPANY

5240 WOOSTER ROAD, CINCINNATI, OHIO 45226

YEAR 1967

SCHEDULES K AND M

Partners - Names and Addresses	Ordinary Loss	Capital 1/1/67	Ordinary Loss	Capital 12/31/67
David H. Trott 3351 Stettinius Ave. Cincinnati, Ohio 45208				
Eugene W. Gilson c/o Procter & Gamble Co. P. O. Box 599 Cincinnati, Ohio 45201		$1,609.78		$1,609.78
Thomas J. Klinedinst 2531 Observatory Avenue Cincinnati, Ohio 45208		804.89		804.89
E. A. Snow Highland Towers Cincinnati, Ohio 45202		804.89		804.89
TOTAL		$3,219.56		$3,219.56

Schedule L—BALANCE SHEETS

ASSETS	Beginning of taxable year — Amount	Beginning of taxable year — Total	End of taxable year — Amount	End of taxable year — Total
1 Cash		3,219.56		3,219.56
2 Trade notes and accounts receivable				
(a) Less allowance for bad debts				
3 Inventories				
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)				
6 Mortgage and real estate loans				
7 Other investments (attach schedule)				
8 Buildings and other fixed depreciable assets				
(a) Less accumulated depreciation				
9 Depletable assets				
(a) Less accumulated depletion				
10 Land (net of any amortization)				
11 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
12 Other assets (attach schedule)				
13 Total assets		3,219.56		3,219.56
LIABILITIES AND CAPITAL				
14 Accounts payable				
15 Mortgages, notes, and bonds payable in less than 1 year				
16 Other current liabilities (attach schedule)				
17 Mortgages, notes, and bonds payable in 1 year or more				
18 Other liabilities (attach schedule)				
19 Partners' capital accounts		3,219.56		3,219.56
20 Total liabilities and capital		3,219.56		3,219.56

Schedule M—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS

	1. Capital account at beginning of year	2. Capital contributed during year	3. Ordinary income (loss) from line 27, page 1	4. Income not included in column 3 plus non-taxable income	5. Losses not included in column 3, plus unallowable deductions	6. Withdrawals and distributions	7. Capital account at end of year
(a)							
(b)							
(c)			(Schedule Attached)				
(d)							
(e)							
Totals							

Schedule N—COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT (See instruction for Schedule N)

1 Ordinary income increased by casualty losses (line 27 plus line 18, page 1)		
2 Add: Payments to partners—salaries and interest (line 14, page 1)		
3 Net loss from sale or exchange of property other than capital assets (line 10, page 1)		
4 Total		
5 Less: Portion of line 4, page 1, which does not constitute net earnings from self-employment		
6 Nonqualifying dividends (line 5, page 1)		
7 Interest (see instructions)		
8 Net rentals from real estate		
9 Net gain from sale or exchange of property other than capital assets (line 10, page 1)		
10 Net earnings from self-employment. Enter in column 11, Schedule K		

☆ U.S. GOVERNMENT PRINTING OFFICE : 1967—O-260-021 c39—16—78327-1 GPO

FORM 1065
U.S. Treasury Department
Internal Revenue Service

U.S. Partnership Return of Income

FOR CALENDAR YEAR 1968 or other taxable year beginning
.... 1968, and ending .... 19......

1968

A Principal business activity (See General Instruction K)

B Principal product or service (See General Instruction K)

Name: BURNS INVESTMENT COMPANY

Number and street: 5240 WOOSTER ROAD

City or town and State: CINCINNATI, OHIO — ZIP code: 45226

C Employer Identification No.: 31-6067071

D County in which located: HAMILTON

E Date business commenced: August 1, 1966

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction R.

INCOME

1	Gross receipts or gross sales .... Less: Returns and allowances	
2	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	
3	Gross profit	
4	Income (loss) from other partnerships, syndicates, etc. (attach statement)	
5	Nonqualifying dividends (attach list—see Instruction 5)	
6	Interest	
7	Rents (Schedule B)	
8	Royalties (attach schedule)	
9	Net farm profit (loss) (Schedule F, Form 1040)	
10	Net gain (loss) from sale or exchange of property other than capital assets (line 16, Schedule D, Form 1065)	
11	Other income (attach schedule)	
12	TOTAL income (lines 3 through 11)	NONE

DEDUCTIONS

13	Salaries and wages (other than to partners)	
14	Payments to partners—salaries and interest	
15	Rent	
16	Interest (Schedule J)	
17	Taxes (Schedule J)	
18	Losses by fire, storm, shipwreck, other casualty or theft (attach statement)	
19	Bad debts (Schedule H if reserve method is used)	
20	Repairs	
21	Depreciation (Schedule I)	
22	Amortization (attach schedule)	
23	Depletion (attach schedule)	
24	Retirement plans, etc. (other than for partners—see Instruction 24)	
25	Other deductions (Schedule J)	3,219.56
26	TOTAL deductions (lines 13 through 25)	3,219.56
27	Ordinary income (loss) (line 12 less line 26) (see General Instruction G)	(3,219.56)

Schedule A—COST OF GOODS SOLD

1	Inventory at beginning of year (if different from last year's closing inventory, attach explanation)	
2	Purchases	
	Less: Cost of items withdrawn for personal use	
3	Cost of labor	
4	Material and supplies	
5	Other costs (attach schedule)	
6	Total of lines 1 through 5	
7	Less: Inventory at end of year	
8	Cost of goods sold. Enter here and on line 2 above (Method of inventory valuation ....)	

Batch No.
Prepared by
Cy's to be Typed (6)
Typed by dj
Read by SB
Filed by
Approved by
Date 4/2/69

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

.... Signature of partner or member — .... Date

NOTE. Any items specially allocated to the partners should be included in the appropriate columns of Schedule K, instead of the lines indicated by Schedules B through J. (See General Instruction Q)

Schedule B—INCOME FROM RENTS

1. Kind and location of property	2. Amount of rent	3. Depreciation (explain in Schedule I)	4. Repairs (explain in Schedule J)	5. Other expenses (explain in Schedule J)
1 Totals				

2 Net income (loss) (column 2 less sum of columns 3, 4, and 5). Enter here and on page 1, line 7

Schedule H—BAD DEBTS (See Instruction 19)

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	Amount added to reserve: 4. Current year's provision	Amount added to reserve: 5. Recoveries	6. Amount charged against reserve	7. Reserve for bad debts at end of year
1963						
1964						
1965						
1966						
1967						
1968						

Schedule I—DEPRECIATION (See Instruction 21)

Where double headings appear use the first heading for depreciation under Revenue Procedures 62–21 and 65–13 and the second heading for other authorized practices.

1. Group and guideline class —OR— Description of property	2. Cost or other basis at beginning of year —OR— Cost or other basis	3. Asset additions in year (amount) —OR— Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62–21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life —OR— Rate (%) or life	8. Depreciation for this year
1 Total additional first-year depreciation (do not include in line 2 below). (Enter here and allocate to each partner in column 5 of Schedule K)							
2 Regular depreciation							
3a Total		3b Total of line 1 and line 2					
4 Less: Amount of depreciation claimed on line 1 above and in Schedules A and B							
5 Balance—Enter here and on page 1, line 21							

SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Procs. 62–21 and 65–13							
2 Other							

Schedule J—EXPLANATION OF LINES 16, 17, AND 25 ON PAGE 1, AND OF COLUMNS 4 AND 5 OF SCHEDULE B

Line or column	Explanation	Amount	Line or column	Explanation	Amount
25	Research & Development	3,217.64			
25	Bank Service	1.92			
	TOTAL	3,219.56			

E.I. NO. 31-6067071

BURNS INVESTMENT COMPANY
[illegible]40 WOOSTER ROAD
CINCINNATI, OHIO 45226

YEAR - 1968

SCHEDULES K AND M

Partners - Names and Addresses	Ordinary Loss	Capital 1/1/68	Ordinary Loss	Capital 12/31/68
David H. Trott 3351 Stettinius Ave. Cincinnati, Ohio 45208				
Eugene W. Gilson c/o Procter & Gamble Co. P. O. Box 599 Cincinnati, Ohio 45201	1,609.78	1,609.78	1,609.78	-0-
Thomas J. Klinedinst 2531 Observatory Avenue Cincinnati, Ohio 45208	804.89	804.89	804.89	-0-
E. A. Snow Highland Towers Cincinnati, Ohio 45202	804.89	804.89	804.89	-0-
TOTAL	3,219.56	3,219.56	3,219.56	NONE

Schedule K—PARTNERS' SHARES OF INCOME, CREDITS, DEDUCTIONS, ETC.

1. Give name, address, and social security number of each partner. (Designate nonresident aliens. If any partner's return or partner or member is filed in another Internal Revenue district or in an Internal Revenue service center, specify district or service center.	2. Percentage of time devoted to business	3. Cost or basis of investment in property: (i) Life Years	(ii) Basis of new property	(iii) Cost of used property
(a)		4 or more but less than 6		
		6 or more but less than 8		
		8 or more		
(b) (Schedule Attached)		4 or more but less than 6		
		6 or more but less than 8		
		8 or more		
(c)		4 or more but less than 6		
		6 or more but less than 8		
		8 or more		
(d)		4 or more but less than 6		
		6 or more but less than 8		
		8 or more		
(e)		4 or more but less than 6		
		6 or more but less than 8		
		8 or more		
Totals				

	4. Ordinary income (loss) (line 27, page 1)	5. Additional first-year depreciation (line 1, Schedule I)	6. Payments to partners—salaries and interest (line 14, page 1)	7. Qualifying dividends (attach list)	8. Net short-term gain (loss) from sale or exchange of capital assets (line 9, Schedule D)
(a)					
(b)					
(c)					
(d)					
(e)					
Totals					

	9. Net long-term gain (loss) from sale or exchange of capital assets (line 13, Schedule D)	10. Net gain (loss) under section 1231 (line 6, Schedule D)	11. Net earnings from self-employment (line 10, Schedule N)	12. Contributions (see Sch. K instructions)	13. Expense account allowance (see Sch. K instructions)
(a)					
(b)					
(c)					
(d)					
(e)					
Totals					

NOTE: See the instructions for other items required to be reported separately.

F Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories?
☐ YES ☒ NO. If "Yes," attach explanation.

G Were you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1968? ☐ YES ☒ NO
If "Yes," where were they filed? ....

H Is any member of the partnership related by blood or marriage to any other member? ☐ YES ☒ NO

I Is any member of the partnership a trust for the benefit of any person related by blood or marriage to any other member? ☐ YES ☒ NO

J Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act? ☐ YES ☒ NO
If "YES," see General Instruction P and enter appropriate amount here $..........

K Did you claim a deduction for expenses connected with:
(1) Entertainment facility (boat, resort, ranch, etc.)? ☐ YES ☒ NO
(2) Living accommodations (except employees on business)? ☐ YES ☒ NO
(3) Employees' families at conventions or meetings? ☐ YES ☒ NO
(4) Employee or family vacations not reported on Form W-2? ☐ YES ☒ NO

Schedule L—BALANCE SHEETS (See General Instruction J)

	Beginning of taxable year		End of taxable year	
ASSETS	Amount	Total	Amount	Total
1 Cash		3,219.56		
2 Trade notes and accounts receivable				
(a) Less allowance for bad debts				
3 Inventories				
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)				
6 Mortgage and real estate loans				
7 Other investments (attach schedule)				
8 Buildings and other fixed depreciable assets				
(a) Less accumulated depreciation				
9 Depletable assets				
(a) Less accumulated depletion				
10 Land (net of any amortization)				
11 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
12 Other assets (attach schedule)				
13 Total assets		3,219.56		NONE
LIABILITIES AND CAPITAL				
14 Accounts payable				
15 Mortgages, notes, and bonds payable in less than 1 year				
16 Other current liabilities (attach schedule)				
17 Mortgages, notes, and bonds payable in 1 year or more				
18 Other liabilities (attach schedule)				
19 Partners' capital accounts		3,219.56		
20 Total liabilities and capital		3,219.56		NONE

Schedule M—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS (See Instruction for Schedule M)

	1. Capital account at beginning of year	2. Capital contributed during year	3. Ordinary income (loss) from line 27, page 1	4. Income not included in column 3 plus non-taxable income	5. Losses not included in column 3, plus unallowable deductions	6. Withdrawals and distributions	7. Capital account at end of year
(a)							
(b)							
(c)							
(d)							
(e)							
Totals							

(Schedule Attached)

Schedule N—COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT (See Instruction for Schedule N)

1 Ordinary income increased by casualty losses (line 27 plus line 18, page 1)
2 Add: Payments to partners—salaries and interest (line 14, page 1)
3 Net loss from sale or exchange of property other than capital assets (line 10, page 1)
4 Total
5 Less: Portion of line 4, page 1, which does not constitute net earnings from self-employment
6 Nonqualifying dividends (line 5, page 1)
7 Interest (see instructions)
8 Net rentals from real estate
9 Net gain from sale or exchange of property other than capital assets (line 10, page 1)
10 Net earnings from self-employment. Enter in column 11, Schedule K

FORM 1065
U.S. Treasury Department
Internal Revenue Service

U.S. PARTNERSHIP RETURN OF INCOME

1965

(To be filed also by syndicates, pools, joint ventures, etc.)

FOR CALENDAR YEAR 1965

or other taxable year beginning ...., 1965, and ending ...., 19...

(PLEASE TYPE OR PRINT PLAINLY)

A. Date business commenced: MARCH 16, 1965

B. County in which located: HAMILTON

C. Principal business activity (see General Inst. K):

D. Principal product or service:

Name: ECHO DEVELOPMENT COMPANY

Number and street: 8120 BLUE ASH ROAD

City or town and State: CINCINNATI, OHIO

Postal ZIP code: 45236

E. Employer identification number: Applied for

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction R.

Line and instruction No.		
INCOME		
1. Gross receipts or gross sales .... Less: Returns and allowances		
2. Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)		
3. Gross profit (line 1 less line 2)		
4. Income (or loss) from other partnerships, syndicates, etc. (attach statement)		
5. Nonqualifying dividends (attach itemized list—see Instruction 5)		
6. Interest	823.27	
7. Rents (Schedule B)		
8. Royalties (attach schedule)		
9. Net farm profit (or loss) (Schedule F, Form 1040)		
10. Net gain (or loss) from sale or exchange of property other than capital assets (from line 16, Separate Schedule D, Form 1065)		
11. Other income (attach schedule)		
12. Total income (lines 3 through 11)		823.27
DEDUCTIONS		
13. Salaries and wages (other than to partners)		
14. Payments to partners—salaries and interest		
15. Rent		
16. Interest (explain in Schedule C)		
17. Taxes (explain in Schedule C)		
18. Losses by fire, storm, shipwreck, or other casualty or theft (attach statement)		
19. Bad debts (from Schedule H if reserve method is used)		
20. Repairs		
21. Depreciation (Schedule I)	33.44	
22. Amortization (attach schedule)		
23. Depletion of mines, oil and gas wells, timber, etc. (attach schedule)		
24. Retirement plans, etc. (other than for partners—see instructions)		
25. Other deductions authorized by law (explain in Schedule J)	79,957.43	
26. Total deductions (lines 13 through 25)		79,990.87
27. Ordinary income (or loss) (line 12 less line 26)		(79,167.60)

Check No. 3
85
3-24-66

F. Is any member of the partnership related by blood or marriage to any other member? ☐ YES ☒ NO

G. Is any member of the partnership a trust for the benefit of any person related by blood or marriage to any other member? ☐ YES ☒ NO

H. Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act? ☐ YES ☒ NO

If "YES," see General Instruction P and enter appropriate amount here .... $..........

I. Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

1. A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where operation of facility was the partnership's principal business.) .... ☐ YES ☒ NO
2. Vacations for partners or members of their families or employees or members of their families? (Other than vacation pay reported on Form W-2.) .... ☐ YES ☒ NO
3. The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by partners, customers, employees, or members of their families? (Other than use by partners or employees while in business travel status.) .... ☐ YES ☒ NO
4. Attendance of members of partners' families or your employees' families at conventions or business meetings? ☐ YES ☒ NO

Under penalties of perjury, I declare that I have examined this return (including accompanying schedules and statements) and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ....

Signature of partner or member   Date

Schedule I.—DEPRECIATION. (See Instruction 21)

[illegible] designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedure [illegible] as well as for those taxpayers who wish to continue using procedures authorized prior to the revenue procedure. Where double [illegible] appear use the first heading for the new procedure and the second heading for the older procedure.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
1. Total additional first-year depreciation (do not include in items below) →							
2. Totals							
3. Less: Amount of depreciation claimed on line 1 above and in Schedules A and B							
4. Balance—Enter here and on page 1, line 21							

Schedule J.—OTHER DEDUCTIONS. (See Instruction 25)

Explanation	Amount	Explanation	Amount
		Total (enter here and on line 25, page 1)	

Schedule K.—PARTNERS' SHARES OF INCOME, CREDITS, AND DEDUCTIONS

1. State name and address of each partner (Designate nonresident aliens, if any.) Where return of partner or member is filed in another internal revenue district, specify district	2. Social Security number	3. Percentage of time devoted to business	4. Ordinary income (or loss) (line 27, page 1)	5. Additional first year depreciation
(a)				
(b) (Schedule Attached)				
(c)				
(d)				
(e)				
Totals				

Continuation of Schedule K

	6. Payments to partners—salaries and interest (line 14, page 1)	7. Qualifying dividends (attach itemized list)	8. Net short-term gain (or loss) from sale or exchange of capital assets (from line 9, Schedule D)	9. Net long-term gain (or loss) from sale or exchange of capital assets (from line 13, Schedule D)	10. Net gain (or loss) under section 1231 (from line 6, Schedule D)	11. Net earnings from self-employment (from line 10, Schedule H)	12. Expense account allowance (see instructions)
(a)							
(b)							
(c)							
(d)							
(e)							
Totals							

ECHO DEVELOPMENT COMPANY

8120 BLUE ASH ROAD, CINCINNATI, OHIO

YEAR 1965

OTHER DEDUCTIONS:

Engineering Services (Research and Development Expense)	$76,592.65
Travel	461.88
Material and Supplies	2,386.29
Professional Services	324.75
Miscellaneous	191.86
	$79,957.43

Election Under Section 174

Echo Development Company hereby elects to expense in the current taxable year -- its first taxable year -- research and development expenses pursuant to Section 174(a).

ECHO DEVELOPMENT COMPANY

8120 BLUE ASH ROAD, CINCINNATI, OHIO

YEAR 1965

SCHEDULE K & SCHEDULE M

PARTNERS' NAME AND ADDRESS	ORDINARY LOSS	CAPITAL 3-16-65	ORDINARY LOSS	CAPITAL CONTRIBUTION	CAPITAL 12-31-65
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio	(15,833.52)	- 0 -	(15,833.52)		(15,833.52)
Robert Boggild 8770 Indian Hill Road Cincinnati, Ohio	(7,916.76)	- 0 -	(7,916.76)		(7,916.76)
William Dale 197 Ireland Avenue Cincinnati, Ohio	(7,916.76)	- 0 -	(7,916.76)		(7,916.76)
Edwin H. Snow, Trustee Highland Towers, Cincinnati, Ohio	(7,916.76)	15,000.00	(7,916.76)	6,325.00	13,408.24
Edward J. Noble Sierra Amatepec 173 Mexico, D. F., Mexico	(7,916.76)	15,000.00	(7,916.76)		7,083.24
L. S. Brucker, Jr., Trustee 3045 Erie Avenue, Cincinnati, Ohio	(7,916.76)	15,000.00	(7,916.76)		7,083.24
Eugene W. Gilson 7 avenue de l'Ermitage Geneva, Switzerland	(7,916.76)	15,000.00	(7,916.76)		7,083.24
George L. Sterne 615 McAlpin Avenue Cincinnati, Ohio	(15,833.52)	- 0 -	(15,833.52)		(15,833.52)
TOTAL	(79,167.60)	60,000.00	(79,167.60)	6,325.00	(12,842.60)

Form 1065—1965

Schedule L.—BALANCE SHEETS

Page 4

ASSETS	Beginning of taxable year Amount	Beginning of taxable year Total	End of taxable year Amount	End of taxable year Total
1. Cash		60,000.00		6,667.69
2. Notes and accounts receivable				
(a) Less: Reserve for bad debts				
3. Inventories				
4. Investments in Government obligations				
5. Other current assets (attach schedule)				
6. Other investments (attach schedule)				
7. Buildings and other fixed depreciable assets			501.64	
(a) Less: Accumulated amortization and depreciation			33.44	468.20
8. Depletable assets				
(a) Less: Accumulated depletion				
9. Land (net of any amortization)				
10. Intangible assets (amortizable only)				
(a) Less: Accumulated amortization				
11. Other assets (attach schedule)				
12. Total assets		60,000.00		7,135.89
LIABILITIES AND CAPITAL				
13. Accounts payable				19,978.49
14. Mortgages, notes, and bonds payable in less than 1 year				
15. Other current liabilities (attach schedule)				
16. Mortgages, notes, and bonds payable in 1 year or more				
17. Other liabilities (attach schedule)				
18. Partners' capital accounts		60,000.00		(12,842.60)
19. Total liabilities and capital		60,000.00		7,135.89

Schedule M.—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS

	1. Capital account at beginning of year	2. Capital contributed during year	3. Income not included in column 4 plus nontaxable income	4. Ordinary income (or loss) from line 27, page 1	5. Losses not included in column 4, plus unallowable deductions	6. Withdrawals and distributions	7. Capital account at end of year
(a)							
(b)			Schedule Attached				
(c)							
(d)							
(e)							
Totals							

Schedule N.—COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT. (See instruction for Schedule N)

1. Ordinary income increased by casualty losses (line 27 plus line 18, page 1). Include income from the performance of services as a doctor of medicine		
2. Add: Payments to partners—salaries and interest (line 14, page 1)		
3. Net loss from sale or exchange of property other than capital assets (line 10, page 1)		
4. Total		
5. Less: Portion of line 4, page 1, which does not constitute net earnings from self-employment		
6. Nonqualifying dividends (from line 5, page 1)		
7. Interest (see instructions)		
8. Net rentals from real estate		
9. Net gain from sale or exchange of property other than capital assets (line 10, page 1)		
10. Net earnings from self-employment. (Enter in column 11, Schedule K)		

Form 1065
Treasury Department
Internal Revenue Service

U.S. Partnership Return of Income

(To be filed also by syndicates, pools, joint ventures, etc.)

FOR CALENDAR YEAR 1966 or other taxable year beginning

..................., 1966, and ending ...., 19...

(PLEASE TYPE OR PRINT)

1966

A Date business commenced: March 16, 1965

Name: ECHO DEVELOPMENT COMPANY

D Employer identification no.: 31-6060814

Number and street: 8901 BLUE ASH ROAD

E County in which located: Hamilton

City or town and State: CINCINNATI, OHIO 45242

ZIP code

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction R.

INCOME	1 Gross receipts or gross sales .... Less: Returns and allowances	
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	
	3 Gross profit	
	4 Income (loss) from other partnerships, syndicates, etc. (attach statement)	
	5 Nonqualifying dividends (attach list—see Instruction 5)	
	6 Interest	
	7 Rents (Schedule B)	
	8 Royalties (attach schedule)	
	9 Net farm profit (loss) (Schedule F, Form 1040)	
	10 Net gain (loss) from sale or exchange of property other than capital assets (line 16, Schedule D, Form 1065)	
	11 Other income (attach schedule)	
	12 TOTAL income (lines 3 through 11)	
DEDUCTIONS	13 Salaries and wages (other than to partners)	
	14 Payments to partners—salaries and interest	
	15 Rent	
	16 Interest (Schedule C)	
	17 Taxes (Schedule C)	7.02
	18 Losses by fire, storm, shipwreck, other casualty or theft (attach statement)	
	19 Bad debts (Schedule H if reserve method is used)	
	20 Repairs	
	21 Depreciation (Schedule I)	50.16
	22 Amortization (attach schedule)	
	23 Depletion (attach schedule)	
	24 Retirement plans, etc. (other than for partners—see instructions)	
	25 Other deductions (Schedule J)	5,571.76
	26 TOTAL deductions (lines 13 through 25)	5,628.94
	27 Ordinary income (loss) (line 12 less line 26)	(5,628.94)

Client No. ....
Prepared by ....
Copies to be typed ... (10)
Typed by ... J.B.
Checked by ....
Filed by ....
Approved by ....
Date ... 3/25/67

F Is any member of the partnership related by blood or marriage to any other member? ☐ YES ☒ NO

G Is any member of the partnership a trust for the benefit of any person related by blood or marriage to any other member? ☐ YES ☒ NO

H Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act? ☐ YES ☒ NO

If "YES," see General Instruction P and enter appropriate amount here .... $..........

I Did you claim a deduction for expenses connected with: (If answer to any question is "Yes," check applicable boxes within that question.)

1 A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where operation of facility was the partnership's principal business.) ☐ YES ☒ NO

2 Vacations for partners or members of their families or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☒ NO

3 The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by partners, customers, employees, or members of their families? (Other than use by partners or employees while in business travel status.) ☐ YES ☒ NO

4 Attendance of members of partners' families or your employees' families at conventions or business meetings? ☐ YES ☒ NO

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ....
Signature of partner or member — Date

Sign here LANIER, GUY, WALKER & CHATFIELD — CINCINNATI, OHIO 45202 — 3/25/67
Signature of preparer other than partner or member — Address — Date

16—70200-1

... 31-6060814

... DEVELOPMENT COMPANY

... E ASH ROAD

... NATI, OHIO 45242

... 1966

... DEDUCTIONS

...ineering Services (Research and Development Expense)	$5,311.51
Professional Services	259.00
Miscellaneous	1.25
TOTAL	$5,571.76

Schedule I—DEPRECIATION. (See Instruction 21)

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedures 62–21 and 65–13 as well as for those taxpayers who wish to continue using practices authorized prior to these revenue procedures. Where double headings appear, use the first heading for depreciation under Revenue Procedures 62–21 and 65–13 and the second heading for other authorized practices.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62–21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)							
2 Totals							
3 Less Amount of depreciation claimed on line 1 above and in Schedules A and B							
4 Balance—Enter here and on page 1, line 21							

SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Proc. 62–21							
2 Other							

Schedule J—OTHER DEDUCTIONS. (See Instruction 25)

Explanation	Amount	Explanation	Amount
		Total (enter here and on line 25, page 1)	

Schedule K—PARTNERS' SHARES OF INCOME, CREDITS, AND DEDUCTIONS

1. State name and address of each partner. (Designate nonresident aliens, if any.) Where return of partner or member is filed in another internal revenue district, specify district	2. Social Security number	3. Percentage of time devoted to business	4. Ordinary income (loss) (line 27, page 1)	5. Additional first-year depreciation
(a)				
(b) SCHEDULE ATTACHED				
(c)				
(d)				
(e)				
Totals				

Continuation of Schedule K

6. Payments to partners—salaries and interest (line 14, page 1)	7. Qualifying dividends (attach list)	8. Net short-term gain (loss) from sale or exchange of capital assets (line 9, Schedule D)	9. Net long-term gain (loss) from sale or exchange of capital assets (line 13, Schedule D)	10. Net gain (loss) under section 1231 (line 6, Schedule D)	11. Net earnings from self-employment (line 10, Schedule N)	12. Expense account allowance (see instructions)
(a)						
(b)						

E. I. NO. 31-6060814
ECHO DEVELOPMENT COMPANY
8901 BLUE ASH ROAD
CINCINNATI, OHIO 45242
YEAR 1966

SCHEDULE K AND SCHEDULE M

PARTNERS - NAMES AND ADDRESSES	ORDINARY LOSS	CAPITAL 1-1-66	ORDINARY LOSS	CAPITAL CONTRIBUTION	CAPITAL 12-31-66
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio	(1,125.80)	(15,833.52)	(1,125.80)		(16,959.32)
Robert Boggild 8770 Indian Hill Road Cincinnati, Ohio	(562.89)	(7,916.76)	(562.89)		(8,479.65)
William Dale 197 Ireland Avenue Cincinnati, Ohio	(562.89)	(7,916.76)	(562.89)		(8,479.65)
Edwin H. Snow, Trustee Highland Towers Cincinnati, Ohio	(562.89)	13,408.24	(562.89)		12,845.35
Edward J. Noble Sierra Amatepec 173 Mexico, D. F., Mexico	(562.89)	7,083.24	(562.89)	6,304.22	12,824.57
L. S. Brucker, Jr., Trustee 3045 Erie Avenue Cincinnati, Ohio	(562.89)	7,083.24	(562.89)	6,325.00	12,845.35
Eugene W. Gilson 7 avenue de l'Ermitage Geneva, Switzerland	(562.89)	7,083.24	(562.89)	6,325.00	12,845.35
George L. Sterne 615-McAlpin Avenue Cincinnati, Ohio	(1,125.80)	(15,833.52)	(1,125.80)		(16,959.32)
TOTALS	$(5,628.94)	$(12,842.60)	$(5,628.94)	$18,9[illegible].22	$ [illegible]

Schedule L—BALANCE SHEETS

ASSETS	Beginning of taxable year — Amount	Beginning of taxable year — Total	End of taxable year — Amount	End of taxable year — Total
1 Cash		6,667.69		64.64
2 Trade notes and accounts receivable				
(a) Less allowance for bad debts				
3 Inventories				
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)				
6 Mortgage and real estate loans				
7 Other investments (attach schedule)				
8 Buildings and other fixed depreciable assets	501.64		501.64	
(a) Less accumulated depreciation	33.44	468.20	83.60	418.04
9 Depletable assets				
(a) Less accumulated depletion				
10 Land (net of any amortization)				
11 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
12 Other assets (attach schedule)				
13 Total assets		7,135.89		482.68
LIABILITIES AND CAPITAL				
14 Accounts payable		19,978.49		
15 Mortgages, notes, and bonds payable in less than 1 year				
16 Other current liabilities (attach schedule)				
17 Mortgages, notes, and bonds payable in 1 year or more				
18 Other liabilities (attach schedule)				
19 Partners' capital accounts		(12,842.60)		482.68
20 Total liabilities and capital		7,135.89		482.68

Schedule M—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS

	1. Capital account at beginning of year	2. Capital contributed during year	3. Income not included in column 4 plus nontaxable income	4. Ordinary income (loss) from line 27, page 1	5. Losses not included in column 4, plus unallowable deductions	6. Withdrawals and distributions	7. Capital account at end of year
(a)							
(b)							
(c)							
(d)							
(e)		SCHEDULE ATTACHED					
Totals							

Schedule N—COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT. (See instruction for Schedule N)

1 Ordinary income increased by casualty losses (line 27 plus line 18, page 1)		
2 Add: Payments to partners—salaries and interest (line 14, page 1)		
3 Net loss from sale or exchange of property other than capital assets (line 10, page 1)		
4 Total		
5 Less: Portion of line 4, page 1, which does not constitute net earnings from self-employment		
6 Nonqualifying dividends (line 5, page 1)		
7 Interest (see instructions)		
8 Net rentals from real estate		
9 Net gain from sale or exchange of property other than capital assets (line 10, page 1)		
10 Net earnings from self-employment. Enter in column 11, Schedule K		

Form 1065

U.S. Partnership Return of Income

FOR CALENDAR YEAR 1967 or other taxable year beginning ...., 1967, and ending ...., 19....

1967

Name: ECHO DEVELOPMENT COMPANY

Number and street: 5240 WOOSTER ROAD

HAMILTON

City or town and State: CINCINNATI, OHIO — ZIP code 45226

March 16, 1965

F Was an Employer's Quarterly Federal Tax Return, Form 941, filed for this business for any quarter in 1967? ☐ Yes X No

G Is this business located within the boundaries of the city, town, etc., indicated above? X Yes ☐ No

H Was this partnership in business at the end of 1967? ☐ Yes ☐ No; I How many months in 1967 was this partnership in business? 12

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction.

INCOME	1 Gross receipts or gross sales .... Less: Returns and allowances	NONE
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	
	3 Gross profit	
	4 Income (loss) from other partnerships, syndicates, etc. (attach statement)	
	5 Nonqualifying dividends (attach list—see Instruction 5)	
	6 Interest	
	7 Rents (Schedule B)	
	8 Royalties (attach schedule)	
	9 Net farm profit (loss) (Schedule F, Form 1040)	
	10 Net gain (loss) from sale or exchange of property other than capital assets (line 16, Schedule D, Form 1065)	
	11 Other income (attach schedule)	
	12 TOTAL income (lines 3 through 11)	NONE
DEDUCTIONS	13 Salaries and wages (other than to partners)	
	14 Payments to partners—salaries and interest	
	15 Rent	
	16 Interest (Schedule J)	
	17 Taxes (Schedule J)	
	18 Losses by fire, storm, shipwreck, other casualty or theft (attach statement)	
	19 Bad debts (Schedule H if reserve method is used)	
	20 Repairs	
	21 Depreciation (Schedule I)	
	22 Amortization (attach schedule)	
	23 Depletion (attach schedule)	
	24 Retirement plans, etc. (other than for partners—see Instruction 24)	
	25 Other deductions (Schedule J)	
	26 TOTAL deductions (lines 13 through 25)	
	27 Ordinary income (loss) (line 12 less line 26)	NONE

Schedule A—COST OF GOODS SOLD

1 Inventory at beginning of year (if different from last year's closing inventory, attach explanation)		
2 Purchases		
Less: Cost of items withdrawn for personal use		
3 Cost of labor		
4 Material and supplies		
5 Other costs (attach schedule)		
6 Total of lines 1 through 5		
7 Less: Inventory at end of year		
8 Cost of goods sold. Enter here and on line 2 above (Method of inventory valuation ....)		

Client No. ....
Prepared by ....
Copies to be Typed ....
Typed by ....
Read by ....
Proved by ....

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

▶ .... Date ....

Signature of partner or member

▶ LANIER, GUY, WALKER & CHATFIELD — CINCINNATI, OHIO 45202 — 4/6/68

Signature of preparer other than partner or member — Address — Date

c50—10—70327-1

Schedule K—PARTNERS' SHARES OF INCOME, CREDITS, DEDUCTIONS, ETC.

1. Name, address, and social security number of each partner. (Include partners' agent, if any.) Where return of partner on file in another Internal Revenue district or in an Internal Revenue service center, specify district or service center.	2. Percentage of time devoted to business	3. COST OR BASIS OF INVESTMENT IN PROPERTY (i) Life Years	(ii) Basis of new property	(iii) Cost of used property	(iv) Included in col. (ii) & (iii)	(v) Amount in col. (iv) elected to be exempt
(a)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(b) (Schedule Attached)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(c)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(d)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(e)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
Totals						

	4. Ordinary income (loss) (line 27, page 1)	5. Additional first-year depreciation	6. Payments to partners—salaries and interest (line 14, page 1)	7. Qualifying dividends (attach list)	8. Net short-term gain (loss) from sale or exchange of capital assets (line 9, Schedule D)
(a)					
(b)					
(c)					
(d)					
(e)					
Totals					

	9. Net long-term gain (loss) from sale or exchange of capital assets (line 13, Schedule D)	10. Net gain (loss) under section 1231 (line 6, Schedule D)	11. Net earnings from self-employment (line 10, Schedule N)	12. Contributions (see Sch. K instructions)	13. Expense account allowance (see Sch. K instructions)
(a)					
(b)					
(c)					
(d)					
(e)					
Totals					

NOTE: See the instructions for other items required to be reported separately.

J Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? Yes ☐ No ☒. If "Yes," attach explanation.

K Were you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1967? Yes ☐ No ☒

If "Yes," where were they filed? ....

L Is any member of the partnership related by blood or marriage to any other member? . . . ☐ YES ☒ NO

M Is any member of the partnership a trust for the benefit of any person related by blood or marriage to any other member? . ☐ YES ☒ NO

N Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act? . . . ☐ YES ☒ NO

If "YES," see General Instruction P and enter appropriate amount here . . . $....

O Did you claim a deduction for expenses connected with: (If answer to any question is "Yes," check applicable boxes within that question.)

1 A hunting lodge . . . ☐, resort property . . . ☐, working ranch or farm . ☐, pleasure boat or yacht . . ☐, fishing camp . . . ☐, or other similar facility . . ☐? (Other than where operation of facility was the partnership's principal business.) . . . ☐ YES ☒ NO

2 Vacations for partners or members of their families or employees or members of their families? (Other than vacation pay reported on Form W-2.) . . . ☐ YES ☒ NO

3 The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by partners, customers, employees, or members of their families? (Other than use by partners or employees while in business travel status.) . . . ☐ YES ☒ NO

4 Attendance of members of partners' families or your employees' families at conventions or business meetings? ☐ YES ☒ NO

E. I. NO. 31-6060814
ECHO DEVELOPMENT COMPANY
5240 WOOSTER ROAD
CINCINNATI, OHIO 45226
YEAR 1967

SCHEDULE K AND SCHEDULE M

PARTNERS - NAMES AND ADDRESSES	ORDINARY LOSS	CAPITAL 1/1/67	ORDINARY LOSS	CAPITAL 12/31/67
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio 45208		$(16,959.32)		$(16,959.32)
Robert Boggild 8770 Indian Hill Road Cincinnati, Ohio 45243		(8,479.65)		(8,479.65)
William Dale 197 Ireland Avenue Cincinnati, Ohio 45218		(8,479.65)		(8,479.65)
Edwin H. Snow, Trustee Highland Towers Cincinnati, Ohio 45202		12,845.35		12,845.35
Edward J. Noble Sierra Amatepec 173 Mexico, D. F., Mexico		12,824.57		12,824.57
L. S. Brucker, Jr., Trustee 3045 Erie Avenue Cincinnati, Ohio 45208		12,845.35		12,845.35
Eugene W. Gilson 7 avenue de l'Ermitage Geneva, Switzerland		12,845.35		12,845.35
George L. Sterne 2680 Lehman Rd. Apt. #52 Cincinnati, Ohio 45204		(16,959.32)		(16,959.32)
TOTALS		$ 482.68		$ 482.68

Form 1065—1967 Page 4

Schedule L—BALANCE SHEETS

ASSETS	Beginning of taxable year — Amount	Beginning of taxable year — Total	End of taxable year — Amount	End of taxable year — Total
1 Cash		482.68		482.68
2 Trade notes and accounts receivable				
(a) Less allowance for bad debts				
3 Inventories				
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)				
6 Mortgage and real estate loans				
7 Other investments (attach schedule)				
8 Buildings and other fixed depreciable assets				
(a) Less accumulated depreciation				
9 Depletable assets				
(a) Less accumulated depletion				
10 Land (net of any amortization)				
11 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
12 Other assets (attach schedule)				
13 Total assets		482.68		482.68
LIABILITIES AND CAPITAL				
14 Accounts payable				
15 Mortgages, notes, and bonds payable in less than 1 year				
16 Other current liabilities (attach schedule)				
17 Mortgages, notes, and bonds payable in 1 year or more				
18 Other liabilities (attach schedule)				
19 Partners' capital accounts		482.68		482.68
20 Total liabilities and capital		482.68		482.68

Schedule M—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS

	1. Capital account at beginning of year	2. Capital contributed during year	3. Ordinary income (loss) from line 27, page 1	4. Income not included in column 3 plus non-taxable income	5. Losses not included in column 3, plus unallowable deductions	6. Withdrawals and distributions	7. Capital account at end of year
(a)							
(b)							
(c)			(Schedule	Attached)			
(d)							
(e)							
Totals							

Schedule N—COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT (See instruction for Schedule N)

1 Ordinary income increased by casualty losses (line 27 plus line 18, page 1)		
2 Add: Payments to partners—salaries and interest (line 14, page 1)		
3 Net loss from sale or exchange of property other than capital assets (line 10, page 1)		
4 Total		
5 Less: Portion of line 4, page 1, which does not constitute net earnings from self-employment		
6 Nonqualifying dividends (line 5, page 1)		
7 Interest (see instructions)		
8 Net rentals from real estate		
9 Net gain from sale or exchange of property other than capital assets (line 10, page 1)		
10 Net earnings from self-employment. Enter in column 11, Schedule K		

☆ U.S. GOVERNMENT PRINTING OFFICE : 1967—O-260-021
a59—16—79327-1 GPO

FORM 1065

U.S. Treasury Department
Internal Revenue Service

U.S. PARTNERSHIP RETURN OF INCOME

(To be filed also by syndicates, pools, joint ventures, etc.)

FOR CALENDAR YEAR 1965

or other taxable year beginning ...., 1965, and ending ...., 19....

(PLEASE TYPE OR PRINT PLAINLY)

1965

A. Date business commenced: MARCH 22, 1965

B. County in which located: HAMILTON

C. Principal business activity (See General Inst. K)

D. Principal product or service

Name: COURIER ENTERPRISES

Number and street: 8120 BLUE ASH ROAD

City or town and State: CINCINNATI, OHIO

Postal ZIP code: 45236

E. Employer identification number: Applied for

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction R.

Line and instruction No.			
	INCOME		
1.	Gross receipts or gross sales .... Less: Returns and allowances		
2.	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)		
3.	Gross profit (line 1 less line 2)		
4.	Income (or loss) from other partnerships, syndicates, etc. (attach statement)		
5.	Nonqualifying dividends (attach itemized list—see Instruction 5)		
6.	Interest	377.02	
7.	Rents (Schedule B)		
8.	Royalties (attach schedule)		
9.	Net farm profit (or loss) (Schedule F, Form 1040)		
10.	Net gain (or loss) from sale or exchange of property other than capital assets (from line 16, Separate Schedule D, Form 1065)		
11.	Other income (attach schedule)		
12.	Total income (lines 3 through 11)		377.02
	DEDUCTIONS		
13.	Salaries and wages (other than to partners)		
14.	Payments to partners—salaries and interest		
15.	Rent		
16.	Interest (explain in Schedule C)		
17.	Taxes (explain in Schedule C)		
18.	Losses by fire, storm, shipwreck, or other casualty or theft (attach statement)		
19.	Bad debts (from Schedule H if reserve method is used)		
20.	Repairs		
21.	Depreciation (Schedule I)		
22.	Amortization (attach schedule)		
23.	Depletion of mines, oil and gas wells, timber, etc. (attach schedule)		
24.	Retirement plans, etc. (other than for partners—see instructions)		
25.	Other deductions authorized by law (explain in Schedule J)	20,054.13	
26.	Total deductions (lines 13 through 25)		20,054.13
27.	Ordinary income (or loss) (line 12 less line 26)		(19,677.11)

F. Is any member of the partnership related by blood or marriage to any other member? ☐ YES ☒ NO

G. Is any member of the partnership a trust for the benefit of any person related by blood or marriage to any other member? ☐ YES ☒ NO

H. Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act? ☐ YES ☒ NO

If "YES," see General Instruction P and enter appropriate amount here .... $........

I. Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

1. A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where operation of facility was the partnership's principal business.) ☐ YES ☒ NO
2. Vacations for partners or members of their families or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☒ NO
3. The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by partners, customers, employees, or members of their families? (Other than use by partners or employees while in business travel status.) ☐ YES ☒ NO
4. Attendance of members of partners' families or employees' families at conventions or business meetings? ☐ YES ☒ NO

Under penalties of perjury, I declare that I have examined this return (including accompanying schedules and statements) and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here .... (Signature of partner or member) .... (Date)

Sign here LANIER, GUY, WALKER & CHATFIELD (Signature of preparer other than partner or member) CINCINNATI, OHIO 45202 (Address) MARCH 24, 1966 (Date)

Cont. No. ....2....
Filed ....
Classified ...S-S...
Keyed by ....
Proved by ....
Processed by ...3-24-66...
Rate ....

Schedule I.—DEPRECIATION. (See Instruction 21)

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedure 62-21 as well as for those taxpayers who wish to continue using procedures authorized prior to the revenue procedure. Where double headings appear use the first heading for the new procedure and the second heading for the older procedure.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
1. Total additional first-year depreciation (do not include in items below) →							
2. Totals							
3. Less: Amount of depreciation claimed on line 1 above and in Schedules A and B							
4. Balance—Enter here and on page 1, line 21							

Schedule J.—OTHER DEDUCTIONS. (See Instruction 25)

Explanation	Amount	Explanation	Amount
		Total (enter here and on line 25, page 1)	

Schedule K.—PARTNERS' SHARES OF INCOME, CREDITS, AND DEDUCTIONS

1. State name and address of each partner. (Designate nonresident aliens, if any.) Where return of partner or member is filed in another internal revenue district, specify district	2. Social Security number	3. Percentage of time devoted to business	4. Ordinary income (or loss) (line 27, page 1)	5. Additional first-year depreciation
(a)				
(b) (Schedule Attached)				
(c)				
(d)				
(e)				
Totals				

Continuation of Schedule K

	6. Payments to partners—salaries and interest (line 14, page 1)	7. Qualifying dividends (attach itemized list)	8. Net short-term gain (or loss) from sale or exchange of capital assets (from line 9, Schedule D)	9. Net long-term gain (or loss) from sale or exchange of capital assets (from line 13, Schedule D)	10. Net gain (or loss) under section 1231 (from line 6, Schedule D)	11. Net earnings from self-employment (from line 10, Schedule N)	12. Expense account allowance (see instructions)
(a)							
(b)							
(c)							
(d)							
(e)							
Totals							

NOTE.—See the instructions for other items required to be reported separately including property subject to investment credit.

COURIER ENTERPRISES

8120 BLUE ASH ROAD, CINCINNATI, OHIO

YEAR 1965

OTHER DEDUCTIONS:

Engineering Services (Research & Development Expense)	$19,636.00
Material and Supplies	376.54
Miscellaneous Expenses	41.59
	$20,054.13

Election Under Section 174 I.R.C.

Courier Enterprises hereby elects to expense in the current taxable year -- its first taxable year -- research and development expenses pursuant to Section 174(a).

COURIER ENTERPRISES

8120 BLUE ASH ROAD, CINCINNATI, OHIO

YEAR 1965

SCHEDULE K AND SCHEDULE M

PARTNER'S NAME AND ADDRESS	ORDINARY LOSS	CAPITAL 3-22-65	ORDINARY LOSS	CAPITAL 12-31-65
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio	$(7,870.85)	- 0 -	$(7,870.85)	(7,870.85)
Robert Boggild 8770 Indian Hill Road Cincinnati, Ohio	(1,967.71)	- 0 -	(1,967.71)	(1,967.71)
William Dale 197 Ireland Avenue Cincinnati, Ohio	(1,967.71)	- 0 -	(1,967.71)	(1,967.71)
Edwin A. Snow, Trustee Highland Towers, Cincinnati, Ohio	(1,967.71)	5,000.00	(1,967.71)	3,032.29
Edward J. Noble Sierra Amatepec 173 Mexico, D. F., Mexico	(1,967.71)	5,000.00	(1,967.71)	3,032.29
L. S. Brucker, Jr., Trustee 3045 Erie Avenue, Cincinnati, Ohio	(1,967.71)	5,000.00	(1,967.71)	3,032.29
Eugene W. Gilson 7 avenue de l'Ermitage Geneva, Switzerland	(1,967.71)	5,000.00	(1,967.71)	3,032.29
TOTAL	(19,677.11)	20,000.00	(19,677.11)	322.89

Schedule L.—BALANCE SHEETS

ASSETS	Beginning of taxable year Amount	Beginning of taxable year Total	End of taxable year Amount	End of taxable year Total
1. Cash		20,000.00		322.89
2. Notes and accounts receivable				
(a) Less: Reserve for bad debts				
3. Inventories				
4. Investments in Government obligations				
5. Other current assets (attach schedule)				
6. Other investments (attach schedule)				
7. Buildings and other fixed depreciable assets				
(a) Less: Accumulated amortization and depreciation				
8. Depletable assets				
(a) Less: Accumulated depletion				
9. Land (net of any amortization)				
10. Intangible assets (amortizable only)				
(a) Less: Accumulated amortization				
11. Other assets (attach schedule)				
12. Total assets		20,000.00		322.89
LIABILITIES AND CAPITAL				
13. Accounts payable				
14. Mortgages, notes, and bonds payable in less than 1 year				
15. Other current liabilities (attach schedule)				
16. Mortgages, notes, and bonds payable in 1 year or more				
17. Other liabilities (attach schedule)				
18. Partners' capital accounts		20,000.00		322.89
19. Total liabilities and capital		20,000.00		322.89

Schedule M.—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS

	1. Capital account at beginning of year	2. Capital contributed during year	3. Income not included in column 4 plus nontaxable income	4. Ordinary income (or loss) from line 27, page 1	5. Losses not included in column 4, plus unallowable deductions	6. Withdrawals and distributions	7. Capital account at end of year
(a)		(Schedule Attached)					
(b)							
(c)							
(d)							
(e)							
Totals							

Schedule N.—COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT. (See instruction for Schedule N)

1. Ordinary income increased by casualty losses (line 27 plus line 18, page 1). Include income from the performance of services as a doctor of medicine		
2. Add: Payments to partners—salaries and interest (line 14, page 1)		
3. Net loss from sale or exchange of property other than capital assets (line 10, page 1)		
4. Total		
5. Less: Portion of line 4, page 1, which does not constitute net earnings from self-employment		
6. Nonqualifying dividends (from line 5, page 1)		
7. Interest (see instructions)		
8. Net rentals from real estate		
9. Net gain from sale or exchange of property other than capital assets (line 10, page 1)		
10. Net earnings from self-employment. (Enter in column 11, Schedule K)		

Form 1065

U.S. Partnership Return of Income

(To be filed also by syndicates, pools, joint ventures, etc.)

FOR CALENDAR YEAR 1966 or other taxable year beginning ...., 1966, and ending ...., 19...

(PLEASE TYPE OR PRINT)

1966

Name: COURIER ENTERPRISES

Number and street: 8901 BLUE ASH ROAD

City or town and State: CINCINNATI, OHIO 45242

ZIP code

D Employer identification number: 31-6061135

E County in which located: Hamilton

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction R

INCOME

1	Gross receipts or gross sales .... Less: Returns and allowances	
2	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	
3	Gross profit	
4	Income (loss) from other partnerships, syndicates, etc. (attach statement)	
5	Nonqualifying dividends (attach list—see Instruction 5)	
6	Interest	
7	Rents (Schedule B)	
8	Royalties (attach schedule)	
9	Net farm profit (loss) (Schedule F, Form 1040)	
10	Net gain (loss) from sale or exchange of property other than capital assets (line 16, Schedule D, Form 1065)	
11	Other income (attach schedule)	
12	TOTAL income (lines 3 through 11)	

DEDUCTIONS

13	Salaries and wages (other than to partners)	
14	Payments to partners—salaries and interest	
15	Rent	
16	Interest (Schedule C)	
17	Taxes (Schedule C)	
18	Losses by fire, storm, shipwreck, other casualty or theft (attach statement)	
19	Bad debts (Schedule H if reserve method is used)	
20	Repairs	
21	Depreciation (Schedule I)	
22	Amortization (attach schedule)	
23	Depletion (attach schedule)	
24	Retirement plans, etc. (other than for partners—see instructions)	
25	Other deductions (Schedule J) Miscellaneous	15.44
26	TOTAL deductions (lines 13 through 25)	15.44
27	Ordinary income (loss) (line 12 less line 26)	(15.44)

Client No. ....
Prepared by ....
Copies to be typed 7
Typed by J.B.
Read by ....
Proofed by ....
Approved by ....
Date 3/27/67

F Is any member of the partnership related by blood or marriage to any other member? ☐ YES ☒ NO

G Is any member of the partnership a trust for the benefit of any person related by blood or marriage to any other member? ☐ YES ☒ NO

H Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act? ☐ YES ☒ NO

If "YES," see General Instruction P and enter appropriate amount here $........

I Did you claim a deduction for expenses connected with: (If answer to any question is "Yes," check applicable boxes within that question.)

1 A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where operation of facility was the partnership's principal business.) ☐ YES ☒ NO

2 Vacations for partners or members of their families or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☒ NO

3 The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by partners, customers, employees, or members of their families? (Other than use by partners or employees while in business travel status.) ☐ YES ☒ NO

4 Attendance of members of partners' families or your employees' families at conventions or business meetings? ☐ YES ☒ NO

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here .... Signature of partner or member .... Date

Sign here LANIER, GUY, WALKER & CHATFIELD — Signature of preparer other than partner or member; CINCINNATI, OHIO 45202 — Address; 3/27/67 — Date

16—79580-1

Schedule I—DEPRECIATION. (See Instruction 21)

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedures 62–21 and 65–13 as well as for those taxpayers who wish to continue using practices authorized prior to these revenue procedures. Where double headings appear, use the first heading for depreciation under Revenue Procedures 62–21 and 65–13 and the second heading for other authorized practices

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62–21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)							
2 Totals							
3 Less: Amount of depreciation claimed on line 1 above and in Schedules A and B							
4 Balance—Enter here and on page 1, line 21							

SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Proc. 62–21							
2 Other							

Schedule J—OTHER DEDUCTIONS. (See Instruction 25)

Explanation	Amount	Explanation	Amount
		Total (enter here and on line 25, page 1)	

Schedule K—PARTNERS' SHARES OF INCOME, CREDITS, AND DEDUCTIONS

1. State name and address of each partner. (Designate nonresident aliens, if any.) Where return of partner or member is filed in another internal revenue district, specify district	2. Social Security number	3. Percentage of time devoted to business	4. Ordinary income (loss) (line 27, page 1)	5. Additional first-year depreciation
(a)				
(b) SCHEDULE ATTACHED				
(c)				
(d)				
(e)				
Totals				

Continuation of Schedule K

	6. Payments to partners—salaries and interest (line 14, page 1)	7. Qualifying dividends (attach list)	8. Net short-term gain (loss) from sale or exchange of capital assets (line 9, Schedule D)	9. Net long-term gain (loss) from sale or exchange of capital assets (line 13, Schedule D)	10. Net gain (loss) under section 1231 (line 6, Schedule D)	11. Net earnings from self-employment (line 10, Schedule N)	12. Expense account allowance (see instructions)
(a)							
(b)							
(c)							
(d)							
(e)							
Totals							

NOTE: See the instructions for other items required to be reported separately including property

E.I. NO. 31-6061135
[illegible] ENTERPRISES
[illegible] ASH ROAD, CINCINNATI, OHIO 45242
[illegible]

[illegible] K AND SCHEDULE M

PARTNERS - NAMES AND ADDRESSES	ORDINARY LOSS	CAPITAL 3-22-66	ORDINARY LOSS	CAPITAL 12-31-66
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio	(9.28)	(11,806.27)	(9.28)	(11,815.55)
Edwin A. Snow, Trustee Highland Towers Cincinnati, Ohio	(1.54)	3,032.29	(1.54)	3,030.75
Edward J. Noble Sierra Amatepec 173 Mexico, D.F., Mexico	(1.54)	3,032.29	(1.54)	3,030.75
L. S. Brucker, Jr., Trustee 3045 Erie Avenue Cincinnati, Ohio	(1.54)	3,032.29	(1.54)	3,030.75
Eugene W. Gilson 7 Avenue De L'Ermitage Geneva, Switzerland	(1.54)	3,032.29	(1.54)	3,030.75
TOTALS	$(15.44)	$322.89	$(15.44)	$307.45

Schedule L—BALANCE SHEETS

ASSETS	Beginning of taxable year Amount	Total	End of taxable year Amount	Total
1 Cash		322.89		307.45
2 Trade notes and accounts receivable				
(a) Less allowance for bad debts				
3 Inventories				
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)				
6 Mortgage and real estate loans				
7 Other investments (attach schedule)				
8 Buildings and other fixed depreciable assets				
(a) Less accumulated depreciation				
9 Depletable assets				
(a) Less accumulated depletion				
10 Land (net of any amortization)				
11 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
12 Other assets (attach schedule)				
13 Total assets		322.89		307.45
LIABILITIES AND CAPITAL				
14 Accounts payable				
15 Mortgages, notes, and bonds payable in less than 1 year				
16 Other current liabilities (attach schedule)				
17 Mortgages, notes, and bonds payable in 1 year or more				
18 Other liabilities (attach schedule)				
19 Partners' capital accounts		322.89		307.45
20 Total liabilities and capital		322.89		307.45

Schedule M—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS

	1. Capital account at beginning of year	2. Capital contributed during year	3. Income not included in column 4 plus non-taxable income	4. Ordinary income (loss) from line 27, page 1	5. Losses not included in column 4, plus unallowable deductions	6. Withdrawals and distributions	7. Capital account at end of year
(a)							
(b)							
(c)							
(d)		SCHEDULE ATTACHED					
(e)							
Totals							

Schedule N—COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT. (See instruction for Schedule N)

1 Ordinary income increased by casualty losses (line 27 plus line 18, page 1)		
2 Add: Payments to partners—salaries and interest (line 14, page 1)		
3 Net loss from sale or exchange of property other than capital assets (line 10, page 1)		
4 Total		
5 Less: Portion of line 4, page 1, which does not constitute net earnings from self-employment		
6 Nonqualifying dividends (line 5, page 1)		
7 Interest (see instructions)		
8 Net rentals from real estate		
9 Net gain from sale or exchange of property other than capital assets (line 10, page 1)		
10 Net earnings from self-employment. Enter in column 11, Schedule K		

☆☆☆☆ U.S. GOVERNMENT PRINTING OFFICE : 1966—O-221-807 16—79290-1 GPO

Form 1065
U.S. Treasury Department
Internal Revenue Service

U.S. Partnership Return of Income

FOR CALENDAR YEAR 1967 or other taxable year beginning ...., 1967, and ending ...., 19......

1967

Employer identification no. 31-6061135	Name: COURIER ENTERPRISES	D Principal business activity (See General Instruction)
B County in which located: HAMILTON	Number and street: 5240 WOOSTER ROAD	E Principal product or service
C Date business commenced: March 22, 1965	City or town and State: CINCINNATI, OHIO — ZIP code 45226	

F Was an Employer's Quarterly Federal Tax Return, Form 941, filed for this business for any quarter in 1967? ☐ Yes ☒ No

G Is this business located within the boundaries of the city, town, etc., indicated above? ☒ Yes ☐ No

H Was this partnership in business at the end of 1967? ☐ Yes ☐ No; I How many months in 1967 was this partnership in business? 12

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see Instruction R.

INCOME

1	Gross receipts or gross sales .... Less: Returns and allowances	NONE
2	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	
3	Gross profit	
4	Income (loss) from other partnerships, syndicates, etc. (attach statement)	
5	Nonqualifying dividends (attach list—see Instruction 5)	
6	Interest	
7	Rents (Schedule B)	
8	Royalties (attach schedule)	
9	Net farm profit (loss) (Schedule F, Form 1040)	
10	Net gain (loss) from sale or exchange of property other than capital assets (line 16, Schedule D, Form 1065)	
11	Other income (attach schedule)	
12	TOTAL income (lines 3 through 11)	NONE

DEDUCTIONS

13	Salaries and wages (other than to partners)	
14	Payments to partners—salaries and interest	
15	Rent	
16	Interest (Schedule J)	
17	Taxes (Schedule J)	
18	Losses by fire, storm, shipwreck, other casualty or theft (attach statement)	
19	Bad debts (Schedule H if reserve method is used)	
20	Repairs	
21	Depreciation (Schedule I)	
22	Amortization (attach schedule)	
23	Depletion (attach schedule)	
24	Retirement plans, etc. (other than for partners—see Instruction 24)	
25	Other deductions (Schedule J)	
26	TOTAL deductions (lines 13 through 25)	
27	Ordinary income (loss) (line 12 less line 26)	NONE

Schedule A—COST OF GOODS SOLD

1	Inventory at beginning of year (if different from last year's closing inventory, attach explanation)	
2	Purchases .... Less: Cost of items withdrawn for personal use	
3	Cost of labor	
4	Material and supplies	
5	Other costs (attach schedule)	
6	Total of lines 1 through 5	
7	Less: Inventory at end of year	
8	Cost of goods sold. Enter here and on line 2 above (Method of inventory valuation ....)	

Group No. ....
Prepared by ....
Copies to be Typed ....
Typed by ....
Read by ....
Footed by ....
Approved by ....

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

▶ .... Signature of partner or member .... Date

▶ LANIER, GUY, WALKER & CHATFIELD — Signature of preparer other than partner or member
CINCINNATI, OHIO 45202 — Address
4/6/68 — Date

c69—16—79327-1

Schedule K—PARTNERS' SHARES OF INCOME, CREDITS, DEDUCTIONS, ETC.

1. Give name, address, and social security number of each partner. (Designate nonresident aliens, if any.) Where return of partner or member is filed in another Internal Revenue district or in an Internal Revenue service center, specify district or service center.	2. Percentage of time devoted to business	3. COST OR BASIS OF INVESTMENT IN PROPERTY (i) Life Years	(ii) Basis of new property	(iii) Cost of used property	Suspension period property (iv) Included in col. (ii) & (iii)	(v) Amount in col. (iv) selected to be exempt
(a)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(b)		4 or more but less than 6				
(Schedule Attached)		6 or more but less than 8				
		8 or more				
(c)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(d)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
(e)		4 or more but less than 6				
		6 or more but less than 8				
		8 or more				
Totals						

	4. Ordinary income (loss) (line 27, page 1)	5. Additional first-year depreciation	6. Payments to partners—salaries and interest (line 14, page 1)	7. Qualifying dividends (attach list)	8. Net short-term gain (loss) from sale or exchange of capital assets (line 9, Schedule D)
(a)					
(b)					
(c)					
(d)					
(e)					
Totals					

	9. Net long-term gain (loss) from sale or exchange of capital assets (line 13, Schedule D)	10. Net gain (loss) under section 1231 (line 6, Schedule D)	11. Net earnings from self-employment (line 10, Schedule N)	12. Contributions (see Sch. K Instructions)	13. Expense account allowance (see Sch. K Instructions)
(a)					
(b)					
(c)					
(d)					
(e)					
Totals					

NOTE: See the instructions for other items required to be reported separately.

J Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? Yes ☐ No ☒. If "Yes," attach explanation.

K Were you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1967? Yes ☐ No ☒

If "Yes," where were they filed? ....

L Is any member of the partnership related by blood or marriage to any other member? ☐ YES ☒ NO

M Is any member of the partnership a trust for the benefit of any person related by blood or marriage to any other member? ☐ YES ☒ NO

N Did the partnership, during the taxable year, have any contracts or subcontracts subject to the Renegotiation Act? ☐ YES ☒ NO

If "YES," see General Instruction P and enter appropriate amount here . . . $..........

O Did you claim a deduction for expenses connected with: (If answer to any question is "Yes," check applicable boxes within that question.)

1 A hunting lodge ☐, resort property ☐, working ranch or farm ☐, pleasure boat or yacht ☐, fishing camp ☐, or other similar facility ☐? (Other than where operation of facility was the partnership's principal business.) ☐ YES ☒ NO

2 Vacations for partners or members of their families or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☒ NO

3 The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by partners, customers, employees, or members of their families? (Other than use by partners or employees while in business travel status.) ☐ YES ☒ NO

4 Attendance of members of partners' families or your employees' families at conventions or business meetings? ☐ YES ☒ NO

E. I. NO. 31-6061135
[illegible]-TER ENTERPRISES
[illegible] WOOSTER ROAD
CINCINNATI, OHIO 45226
YEAR 1967

SCHEDULE K AND SCHEDULE M

PARTNERS - NAMES AND ADDRESSES	ORDINARY LOSS	CAPITAL 1/1/67	ORDINARY LOSS	CAPITAL 12/31/67
David H. Trott 3351 Stettinius Avenue Cincinnati, Ohio 45208		$(11,815.55)		$(11,815.55)
Edwin A. Snow, Trustee Highland Towers Cincinnati, Ohio 45202		3,030.75		3,030.75
Edward J. Noble Sierra Amatepec 173 Mexico, D. F., Mexico		3,030.75		3,030.75
L. S. Brucker, Jr., Trustee 3045 Erie Avenue Cincinnati, Ohio 45208		3,030.75		3,030.75
Eugene W. Gilson 7 avenue de l'Ermitage Geneva, Switzerland		3,030.75		3,030.75
TOTALS		$ 307.45		$ 307.45

Schedule L—BALANCE SHEETS

ASSETS	Beginning of taxable year Amount	Beginning of taxable year Total	End of taxable year Amount	End of taxable year Total
1 Cash		307.45		307.45
2 Trade notes and accounts receivable				
(a) Less allowance for bad debts				
3 Inventories				
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)				
6 Mortgage and real estate loans				
7 Other investments (attach schedule)				
8 Buildings and other fixed depreciable assets				
(a) Less accumulated depreciation				
9 Depletable assets				
(a) Less accumulated depletion				
10 Land (net of any amortization)				
11 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
12 Other assets (attach schedule)				
13 Total assets		307.45		307.45
LIABILITIES AND CAPITAL				
14 Accounts payable				
15 Mortgages, notes, and bonds payable in less than 1 year				
16 Other current liabilities (attach schedule)				
17 Mortgages, notes, and bonds payable in 1 year or more				
18 Other liabilities (attach schedule)				
19 Partners' capital accounts		307.45		307.45
20 Total liabilities and capital		307.45		307.45

Schedule M—RECONCILIATION OF PARTNERS' CAPITAL ACCOUNTS

	1. Capital account at beginning of year	2. Capital contributed during year	3. Ordinary income (loss) from line 27, page 1	4. Income not included in column 3 plus non-taxable income	5. Losses not included in column 3, plus unallowable deductions	6. Withdrawals and distributions	7. Capital account at end of year
(a)							
(b)							
(c)			(Schedule Attached)				
(d)							
(e)							
Totals							

Schedule N—COMPUTATION OF NET EARNINGS FROM SELF-EMPLOYMENT (See instruction for Schedule N)

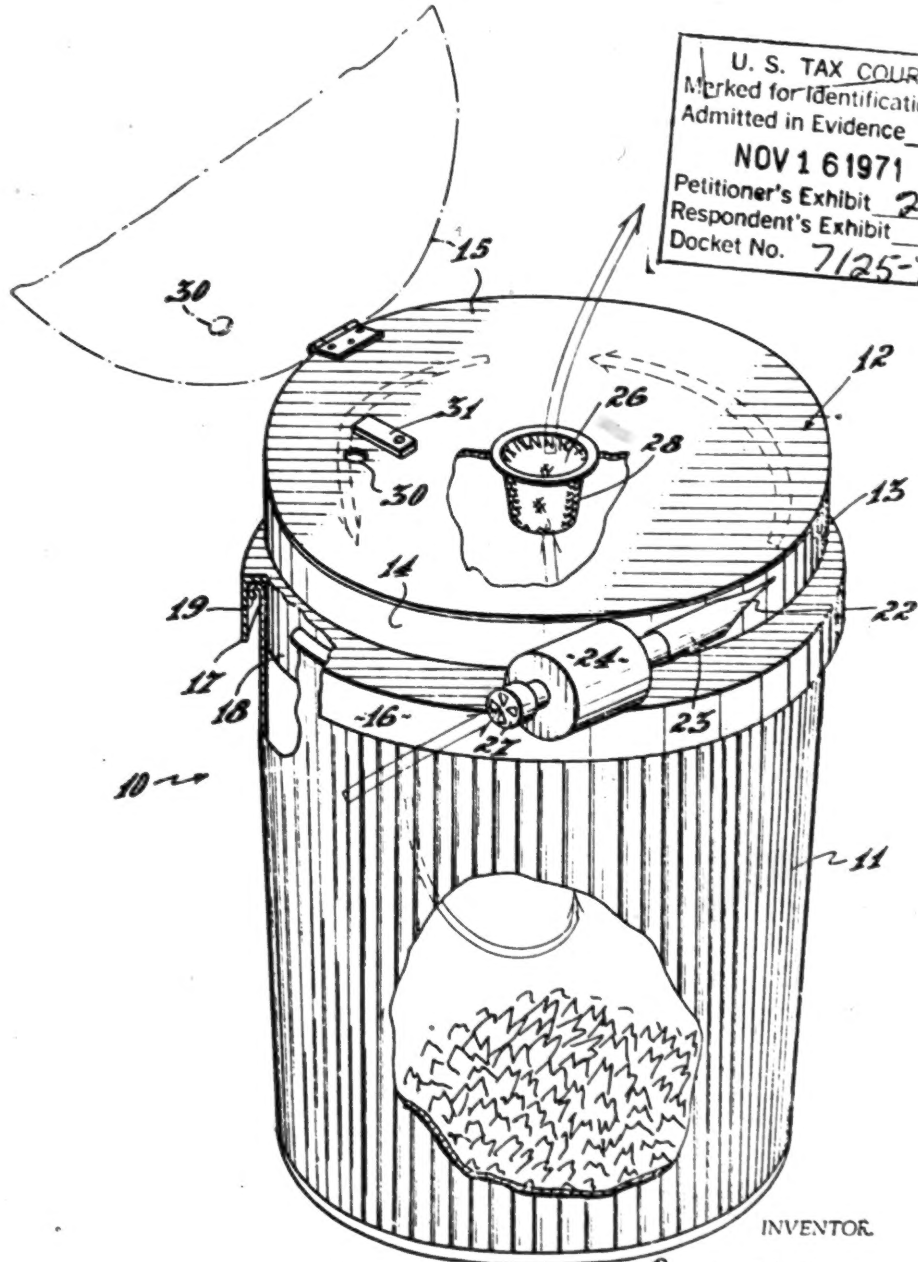
1 Ordinary income increased by casualty losses (line 27 plus line 18, page 1)		
2 Add: Payments to partners—salaries and interest (line 14, page 1)		
3 Net loss from sale or exchange of property other than capital assets (line 10, page 1)		
4 Total		
5 Less: Portion of line 4, page 1, which does not constitute net earnings from self-employment		
6 Nonqualifying dividends (line 5, page 1)		
7 Interest (see instructions)		
8 Net rentals from real estate		
9 Net gain from sale or exchange of property other than capital assets (line 10, page 1)		
10 Net earnings from self-employment. Enter in column 11, Schedule K		

☆ U.S. GOVERNMENT PRINTING OFFICE : 1967—O-260-021 €60—16—78327-1 GPO

March 3, 1970 D. H. TROTT 3,498,240

LEAF BURNER

Filed June 10, 1968



INVENTOR.

BY David H. Trott

Hood, Herron and Evans

ATTORNEYS

United States Patent Office

3,498,240
Patented Mar. 3, 1970

3,498,240

LEAF BURNER

David H. Trott, Cincinnati, Ohio, assignors, by mesne assignments, to Burns Investment Corp., Cincinnati, Ohio, a corporation of Ohio

Filed June 10, 1968, Ser. No. 735,839
Int. Cl. F23g *5/00;* **F23b** *1/38*
U.S. Cl. 110—18 **12 Claims**

ABSTRACT OF THE DISCLOSURE

A method of burning combustible material utilizing a container which, during the burning process, is closed except for two openings at the top, one being an inlet for forced air which is introduced to support and hasten combustion, and the other being an outlet for combusted gases.

A lid having means adapting it to be mounted on a trash can and having a blower for driving air into the trash can and having an outlet hole through which combusted gases can pass, the lid forming, with a trash can, a burner for combustibles.

This invention relates to a burner for the purpose of disposing of combustible wastes, such as rubbish, trash and tree leaves and to a method of burning such combustibles in a substantially closed container.

Many homeowners do not have any access whatever to trash pickup service. Many more do not have adequate trash can capacity to accommodate all the trash they accumulate between pickups. This explains why a great many such homeowners follow the practice of regular burning of waste materials all year round. The enabling facilities available to such homeowners are unsophisticated, however, and do little to minimize this chore.

In addition to normal trash generated by daily living, most homeowners face a seasonal problem every fall in disposing of fallen tree leaves. In some communities the loose burning of leaves is not permitted and the homeowners must rake his leaves to the street and at regular intervals these leaves are picked up by the city. This is reasonably satisfactory, although the removal of the leaves is an expense to the city, and, where leaves are not picked up contemporaneously with the raking of them onto the street, the wind may very well simply distribute the leaves piled on the street to the yards of the adjoining properties.

In other communities the leaves are burned in the street or yard by the homeowner. Such open burning presents fire hazards, and the clouds of smoke generated by the leaf burning certainly are not compatible with the air pollution problem which plague so many communities.

In some locations neither is possible, that is, the city will not pick up the leaves and the homeowner has no convenient place for burning them. In such a situation, the disposal of the leaves is at best inconvenient and/or expensive.

An objective of the present invention has been to effect the disposal of combustible waste as follows:

A container, or burning chamber, is filled with waste material. The top layer of said material then is ignited. As soon as a self-sustaining flame is achieved, the chamber is closed and forced air is fed into the inlet port located on the upper side of the chamber. The forced air may be generated by a blower attached to the device, or taken from another source. The combustion process is accelerated greatly by said air and, as it proceeds, consumption of the uppermost material continually exposes the adjacent underlying material to the flames. As a result, the fire bed progresses gradually downward in the burning chamber, until all combustible material has been

burned. Combusted gases escape through the exhaust chamber. The egress preferably is covered by a foraminous screen or basket which serves as a strainer to aid in retaining flaming materials. From time to time, in the latter stages of the burning, completion of the process may be expedited by inserting a rod into the chamber, through a small porthole in the top provided for this purpose, and used to agitate the remaining contents.

An objective of the present invention has been to provide a means of burning leaves or other waste which is both speedy and safe, with a minimum of hazard from flying embers. Open burning is unsatisfactory in this respect, and those incinerators consisting basically of a perforated container are extremely slow. The present invention, being closed except for a relatively small exhaust port, permits the escape of little or no burning material. The use of forced air, however, greatly speeds up the burning process. Furthermore, this air is introduced in such a way to utilize the well-known principles underlying the cyclone furnace, taking advantage of centrifugal force to restrain still solid materials from reaching the exhaust port.

Another objective of the present invention has been to make the burning of leaves and waste material as smoke-free as possible. This is accomplished by the novel concept of burning from the top down, rather than from the bottom up, which is the normal procedure.

Another objective of the present invention has been to provide the average homeowner with a means of burning leaves and other waste which is not only speedy and efficient, but also inexpensive and compact. These objectives, too, are served by the novel principle of burning from the top down. All of the special physical features of the invention are concentrated in the top portion of the device, with the balance of the hardware serving simply as a chamber to contain the material while it is being consumed. Thus, it is possible to manufacture this top portion only, in the form of a special lid or cap, which the homeowner simply places on a stadnard 20-gallon trash can when he wishes to burn waste material. Since such a unit can be about the size of a drum or hat box, storage would present no problem.

With respect to said special lid, another objective of the invention has been to provide a satisfactory operational fit between lid and can during operation. This is accomplished by flanges depending from the lid which present an annular groove which receives the upper edge of the trash can.

Another objective of the invention has been to regulate the flow of air so that a reduced flow of air can be employed initially in order to accelerate the combustion of the products within the trash can without blowing out the flame. After combustion is widespread within the can, the flow of air is turned to maximum to effect the rapid burning of the combustibles. Said regulator also may be employed to reduce the vigor of the combustion during manual agitation of the burning material.

It has been another objective of the invention to provide the lid with a small opening through which a rod can pass to agitate the contents within the trash burner when desirable.

It has been another objective of the invention to provide a hinged cap which permits the trash burner to be loaded for burning without requiring the removal of the lid.

These and other objectives of the present invention will become more readily apparent from the following detailed description taken in conjunction with the accompanying drawing which is a perspective view partly in section showing the invention.

Referring to the drawing, the trash burner indicated at 10 includes a 20-gallon trash can 11 and a lid 12 formed

in accordance with the present invention. It should be understood, of course, that there is no requirement that the lid 12 of the invention be associated specifically with a 20-gallon trash can. That size is preferred because of the extensive use of that size of can throughout the United States. Said lid could be designed to fit a larger trash can, or some other container such as an oil drum.

The lid has a pillbox-shaped housing 13 at its upper portion, the pillbox shape being formed by a cylindrical ring 14 and a cap 15 which is hinged to the ring 14. The cap can be rigidly fixed to the ring 14 with the can 11 being loaded by removal of the entire lid.

The lower edge of the ring 14 is welded to a skirt 16 formed by two spaced depending flanges 17 and 18 which form between them an annular groove having an inside diameter of 16.5 inches and an outside diameter of 19.5 inches into which the upper rim 19 of the trash can (having a diameter of approximately 17.5 inches) projects to seat the lid on the trash can.

The ring 14 has an inlet opening 22 to which a tangentially directed tube 23 is secured. A blower 24 is mounted on the tube 23 to direct air into the trash burner. At the low pressure or inlet side of the blower, a regulator 27, for varying the size of the inlet opening, is rotatably applied so as to permit the regulation of the air discharged into the trash burner.

Alternatively, and not shown, the inlet tube 23 can be connected to a standard vacuum cleaner hose which is connected to the high pressure end of a vacuum cleaner. Through this adaptation of the invention, the homeowner can be offered the invention in a form which would minimize his investment by eliminating the need for a blower.

The cap 15 has a central exhaust opening 26 which is about one-fifth the diameter of the lid itself. A foraminous strainer 28, which can be removable or fixed to the cap, is inserted in the opening 26 and prevents the exit of large pieces of burning material. The strainer should be of stainless steel or another material which is resistant to high heat.

A small hole 30 which is coverable by a pivoted flap 31 is formed in the cap 15 near the outer edge. The hole 30 is adapted to receive an elongated stirring implement as, for example, a piece of rod or the like with which the contents within the trash burner can be stirred. This stirring action is useful in the later stages of combustion wherein the remaining combustible material may tend to compact itself and thus slow completion of the burning process.

The operation of the invention is as follows:

Leaves or other trash are placed in the can 11 when the lid 12 is removed or, alternatively, when the lid 12 is in position and its cap 15 is pivoted to open position as shown in broken line in the figure. With the cap raised, the combustibles are ignited and then the cap is closed.

Once the combustibles are ignited, the blower is energized and preferably has its intake partly blocked by the regulator 27. The gentle breeze from the blower fans the flame until it spreads throughout the top of the combustibles, this requiring a very few seconds of time. Thereafter, the inlet to the blower is opened fully and the blast of air introduced tangentially swirls around the top of the combustibles to effect their rapid burning. The combusting gases exhaust through the strainer in a substantially completely oxidized state. That is to say, there is practically no smoke or particulate material which passes through the strainer 28 during the operation. Hence, the burning is quite clean and should not be offensive to one's neighbors.

As burning progresses and the top two-thirds of the combustibles are burned away, the operator might find it advantageous to open the flap 31 and to stick a rod through the opening 30 to stir the combustibles remaining in the bottom of the trash can to speed their burning. The burning follows generally the path of the arrows shown in the drawing wherein the air flows tangentially around the top of the cap and then down into the combustibles and upwardly out through the discharge opening or exhaust opening 26.

Burning of large quantities of leaves or other material may be expedited by the use of more than one trash can. Leaves are gathered and packed in one trash can, the lid of the present invention applied, and the leaves are ignited. As the leaves in this trash can are being burned, another trash can can be filled. Then, after combustion in the first can is completed, the lid can be transferred to the other filled can and the burning process repeated.

In the alternative embodiment of the invention as a complete unit, a clean-out port could be provided at the bottom to facilitate periodic ash removal (not shown).

The invention also could be fitted with an integral agitation apparatus, installed internally but operated by external means (not shown).

What is claimed is:

1. A burner comprising:
a housing, said housing being generally cylindrical, said housing having a normally closed top and having an inlet opening and an exhaust opening, said housing being open at the bottom,
said inlet being located at the top of the side wall of said housing, and directed tangentially into it,
said exhaust opening being located in the center of the top of said housing,
means for connecting a source of forced air to said inlet opening,
means for mounting said housing on top of an underlying chamber to close same.

2. A burner according to claim 1 further comprising an underlying combustion chamber, said housing fixed to said chamber, said chamber being cylindrical in form in its upper portion, said chamber being open at the top, said chamber being normally closed at the bottom.

3. A burner according to claim 1 wherein said mounting means comprises a pair of spaced concentric circular flanges depending from said housing and forming between them an annular groove to removably receive the top of an underlying container.

4. A burner according to claim 3 in which said groove has an inside diameter of approximately 16.5 inches and an outside diameter of approximately 19.5 inches.

5. A burner according to claim 1 further comprising a foraminous strainer covering said exhaust outlet.

6. A burner according to claim 1 in which said top is hinged at one edge to said housing, permitting said top to be raised to provide access to the underlying burner chamber for the purpose of filling it with combustible material.

7. A burner according to claim 1 in which said housing includes a stirring opening spaced from said exhaust and inlet openings, said opening having a covering flap fastened to said housing and adapted selectively to overlie said stirring opening.

8. A burner according to claim 1 further comprising a blower mounted on said housing and connected to said housing inlet, said blower thus being a component of said housing, and constituting the source of said forced air.

9. A burner according to claim 8, further comprising a regulator governing the supply of air to said blower to regulate the rate of supply of said forced air to said housing.

10. A burner cap comprising:
a circular ring having an inlet opening therein,
a circular plate secured to the upper edge of said ring,
a pair of depending concentric spaced flanges secured to the lower edge of said ring and forming an annular groove adapted to receive the top of a trash can,
said lid having an exhaust opening in the center thereof, and
a foraminous strainer in said exhaust opening.

11. A burner comprising:

a container open at the top and defining a combustion chamber for burning combustibles,

a housing,

means removably mounting said housing on the top of said container to close the same,

said housing having an air inlet opening exiting directly into the upper end of said container when said housing is mounted on said container, and having an exhaust opening, and

means for connecting a blower to said inlet opening, whereby forced air is introduced to the top layer of said combustibles to burn the combustibles progressively from the top down.

12. The method of burning combustibles comprising the steps of depositing a batch of said material in a generally cylindrical chamber, igniting the top layer of said material, closing said chamber except for inlet and exhaust openings located at the top of said chamber,

introducing forced air tangentially only to the top layer of said material, thus establishing a circular pattern of air movement within the chamber, progressively burning the combustible material from the top downward, permitting escapement of combusted gases centrally and above said material.

References Cited

UNITED STATES PATENTS

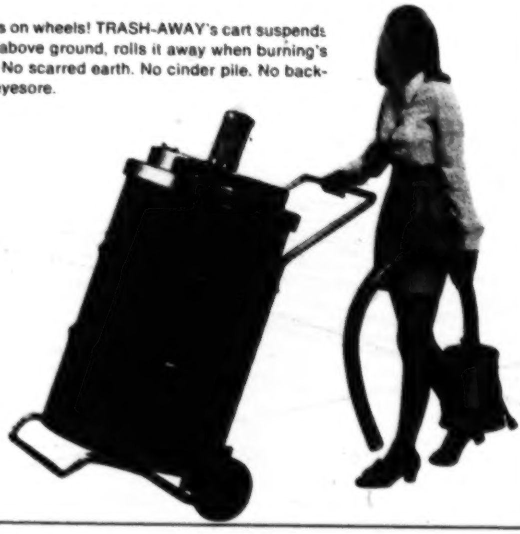
2,707,444	5/1955	Van Loon	110—28
2,936,724	5/1960	Bishop	110—18
3,286,666	11/1966	Ohlsson	110—8
3,202,118	8/1965	Baldine	110—18

FOREIGN PATENTS

1,031,401	3/1953	France.	

KENNETH W. SPRAGUE, Primary Examiner

All this on wheels! TRASH-AWAY's cart suspends drum above ground, rolls it away when burning's done. No scarred earth. No cinder pile. No backyard eyesore.



Owners c' TRASH-AWAY love it!

All kinds of people use TRASH-AWAY — homeowners, motel managers, garden enthusiasts, farmers, restaurateurs, nursery and greenhouse owners, veterinarians, livestock breeders, club managers. And once they start using TRASH-AWAY, they volunteer comments like these:

COUNTRY ESTATE OWNER: OIL CITY, PENNSYLVANIA: "In winter, snow and mud make it difficult to remove trash and refuse; by using three barrels, I am able to go as long as three months without dumping the ashes and debris. During the summer, immediate burning of refuse eliminates odors and flies."

MOTEL MANAGER; PETERSBURG, VIRGINIA: "We could not burn our trash until after 4 P.M., because of laws about open burning. Now we can burn and not worry about the time, or windy days. Our problem with rats has been eliminated. We don't have to stand and watch it burn. We burn a whole barrel full in 20 minutes and have only a shovel full of ashes left."

DAIRY FARMER; TITUSVILLE, PENNSYLVANIA: "The disposal of bailer twine used to be a major problem on my dairy farm, but with TRASH-AWAY, a drum of twine is quickly reduced to a handful of ash."

FACTORY OWNER; FAIRFAX, OHIO: "The units paid for themselves the first month we used them in our plants."

WEEKEND HOMEOWNER; SEATTLE, WASHINGTON: "The ordinary incinerator we used to use for burning trash and papers at our summer place inevitably rusted and burned out, and we always had the problem of flying sparks. Now that I have TRASH-AWAY, my problems have been solved. It has proven to be an extremely safe and efficient way of burning trash, and I am very pleased with it.

EATS UP LEAVES! BANISHES TRASH!

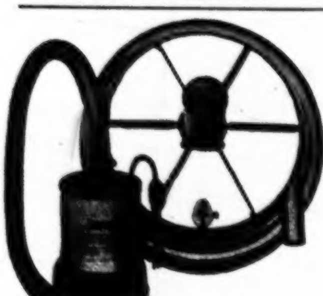
Unbelievable! Fill drum with trash and garbage . . . or leaves. Light the top with a match. Put on the TRASH-AWAY lid. Hook up the Air Jet and flick the switch. Presto! Drum is transformed into a powerful incinerator. Eats up waste like cotton candy. In 15 minutes it's empty and ready for another load.

And we mean empty. The fire burns clear to the bottom of the drum. There's no pile of half burned material left — no smoldering cake. Users tell us they go months without having to empty TRASH-AWAY.

What's the secret? A high speed stream of air from the electric Air Jet fans the fire in the drum to white heat — same as a bellows. Burns things you wouldn't dream of burning before — like old shoes and aluminum cans! And the hot fire means complete combustion—the enemy of dirty air. Actual tests show TRASH-AWAY cuts air pollution by more than 60%.

With TRASH-AWAY at home and at your place of business, you never have a refuse or leaf pile-up. You never have to bother with bagging or dumping or building open bonfires. You never have trash odor, insect or rodent problems. And you cut to a fraction the space bulky, unattractive trash receptacles take up.

Mfd. by Crossbow Inc.
Cincinnati, O. 45226



Cut-away view of air action inside drum

TRASH-AWAY really works. It can burn 60 pounds of trash in an hour — a pound every minute! That's as fast as many large industrial incinerators — custom installations that cost $2,000 and more. The unique design of the Lid makes air from the Jet whirl like a cyclone, fanning the fire to 1500° and even higher!

Specifications

BURNING CHAMBER — 23" diameter, 34" high, 20 gauge steel drum, 55-gallon (6 bushels) capacity — equivalent to 3 standard-size trash cans.

LID — 18 gauge stainless steel with 6 radial raised ribs to prevent heat distortion. Double side walls ensure snug fit on drum.

2 STAGE SPARK ARREST SYSTEM — internal 1st stage has 320 individual openings to block large cinders. External 2nd stage has fine screen to vent exhaust gases without live sparks or fly ash problem.

POWERFUL AIR JET — 110 volt AC-DC universal ½ horsepower motor. Centrifugal axial vane blower is driven at 19,000 RPM, puts out air at 90 cubic feet per minute. Complete with on-off switch. Air hose is 4½ ft. flexible steel.

CART — tubular all-steel frame. Solid steel bar axle. Steel 8" wheels, solid rubber tires. Steel heat shields protect tires from heat. Leash type chain secures drum to cart, unhooks readily from special latch to permit removal of drum.

FULL SIX MONTHS WARRANTY ON ALL PARTS AND LABOR.

Made in U.S.A. U.S. Pat. 3486240. Foreign patents pending.

ORDER YOURS NOW

NOTE: This brochure was printed after the issuance of the "Trash-Away" patent.

All this on wheels! TRASH-AWAY's cart suspends drum above ground, rolls it away when burning's done. No scarred earth. No cinder pile. No backyard eyesore.

Owners of TRASH-AWAY love it!

All kinds of people use TRASH-AWAY — homeowners, motel managers, garden enthusiasts, farmers, restaurateurs, nursery and greenhouse owners, veterinarians, livestock breeders, club managers. And once they start using TRASH-AWAY, they volunteer comments like these:

COUNTRY ESTATE OWNER: OIL CITY, PENNSYLVANIA: "In winter, snow and mud make it difficult to remove trash and refuse; by using three barrels, I am able to go as long as three months without dumping the ashes and debris. During the summer, immediate burning of refuse eliminates odors and flies."

MOTEL MANAGER; PETERSBURG, VIRGINIA: "We could not burn our trash until after 4 P.M., because of laws about open burning. Now we can burn and not worry about the time, or windy days. Our problem with rats has been eliminated. We don't have to stand and watch it burn. We burn a whole barrel full in 20 minutes and have only a shovel full of ashes left."

DAIRY FARMER; TITUSVILLE, PENNSYLVANIA: "The disposal of bailer twine used to be a major problem on my dairy farm, but with TRASH-AWAY, a drum of twine is quickly reduced to a handful of ash."

FACTORY OWNER; FAIRFAX, OHIO: "The units paid for themselves the first month we used them in our plants."

WEEKEND HOMEOWNER; SEATTLE, WASHINGTON: "The ordinary incinerator we used to use for burning trash and papers at our summer place inevitably rusted and burned out, and we always had the problem of flying sparks. Now that I have TRASH-AWAY, my problems have been solved. It has proven to be an extremely safe and efficient way of burning trash, and I am very pleased with it.

EATS UP LEAVES! BANISHES TRASH!

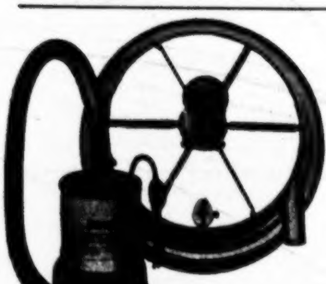
Unbelievable! Fill drum with trash and garbage . . . or leaves. Light the top with a match. Put on the TRASH-AWAY lid. Hook up the Air Jet and flick the switch. Presto! Drum is transformed into a powerful incinerator. Eats up waste like cotton candy. In 15 minutes it's empty and ready for another load.

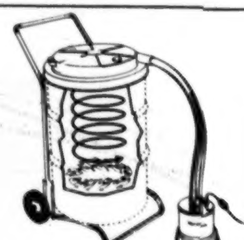
And we mean empty. The fire burns clear to the bottom of the drum. There's no pile of half burned material left — no smoldering cake. Users tell us they go months without having to empty TRASH-AWAY.

What's the secret? A high speed stream of air from the electric Air Jet fans the fire in the drum to white heat — same as a bellows. Burns things you wouldn't dream of burning before — like old shoes and aluminum cans! And the hot fire means complete combustion—the enemy of dirty air. Actual tests show TRASH-AWAY cuts air pollution by more than 60%.

With TRASH-AWAY at home and at your place of business, you never have a refuse or leaf pile-up. You never have to bother with bagging or dumping or building open bonfires. You never have trash odor, insect or rodent problems. And you cut to a fraction the space bulky, unattractive trash receptacles take up.

Mfd. by Crossbow Inc.
Cincinnati, O. 45226





Cut-away view of air action inside drum

TRASH-AWAY really works. It can burn 60 pounds of trash in an hour — a pound every minute! That's as fast as many large industrial incinerators — custom installations that cost $2,000 and more. The unique design of the Lid makes air from the Jet whirl like a cyclone, fanning the fire to 1500° and even higher!

Specifications

BURNING CHAMBER — 23" diameter, 34" high, 20 gauge steel drum, 55-gallon (8 bushels) capacity — equivalent to 3 standard-size trash cans.

LID — 18 gauge stainless steel with 6 radial raised ribs to prevent heat distortion. Double side walls ensure snug fit on drum.

2 STAGE SPARK ARREST SYSTEM — internal 1st stage has 320 individual openings to block large cinders. External 2nd stage has fine screen to vent exhaust gases without live sparks or fly ash problem.

POWERFUL AIR JET — 110 volt AC-DC universal ½ horsepower motor. Centrifugal axial vane blower is driven at 19,000 RPM, puts out air at 90 cubic feet per minute. Complete with on-off switch. Air hose is 4½ ft. flexible steel.

CART — tubular all-steel frame. Solid steel bar axle. Steel 8" wheels, solid rubber tires. Steel heat shields protect tires from heat. Leash type chain secures drum to cart, unhooks readily from special latch to permit removal of drum.

FULL SIX MONTHS WARRANTY ON ALL PARTS AND LABOR.

Made in U.S.A. U.S. Pat. 3498240. Foreign patents pending.

ORDER YOURS NOW

NOTE: This brochure was printed after the issuance of the "Trash-Away" patent.

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-641

EDWIN A. SNOW and HELEN B. SNOW,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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COURT INDEX PRESS, INC. — 809 Walnut Street, Cincinnati, Ohio 45202 — (513) 241-1450

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Cases Cited

In The

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioners, EDWIN A. SNOW and HELEN B. SNOW, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on July 17, 1973.

OPINIONS BELOW

A. The opinion of the Court of Appeals, not yet reported, appears in the appendix hereto.

B. The opinion of the United States Tax Court, reported at 58 T.C. No. 60 (June 30, 1972), also appears in the appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on July 17, 1973, and this petition for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254 (1).

QUESTION PRESENTED

1. Whether a business is entitled to deduct research and experimental expenses incured in the development of its initial product.

STATUTORY PROVISIONS INVOLVED

Sec. 174. RESEARCH AND EXPERIMENTAL EXPENDITURES

"(a) Treatment as Expenses –

"(1) In General. – A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

"(2) When Method May Be Adopted –

"(A) Without Consent. – A taxpayer may, without the consent of the Secretary or his delegate, adopt the method provided in this subsection for his first taxable year –

"(i) which begins after December 31, 1953, and ends after the date on which this title is enacted, and

"(ii) for which expenditures described in paragraph (1) are paid or incurred.

"(B) With Consent. — A taxpayer may, with the consent of the Secretary or his delegate, adopt at any time the method provided in this subsection.

"(3) Scope. — The method adopted under this subsection shall apply to all expenditures described in paragraph (1). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary or his delegate, a change to a different method is authorized with respect to part or all of such expenditures."

STATEMENT OF THE CASE

This case involves deficiencies asserted in federal income taxes for the taxable year 1966 in the amount of $6,247.00. The deficiency involved is attributable to an adjustment disallowing as a deduction Petitioner Snow's[1] distributive share of a net operating loss of a partnership d/b/a Burns Investment Company ("Burns").

Burns reported a net operating loss in the amount of $36,780.44 on its 1966 federal income tax return (Form 1065) of which Snow's distributive share was $9,195.00. This loss arose as a result of the partnership incurring and

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[1] Helen B. Snow is also listed as petitioner herein solely because she and Mr. Snow filed a joint return in 1966.

paying expenses in connection with research and development of a new product.

The Commissioner of Internal Revenue determined that the research and development expenses were not allowable to Burns under Section 174 or any other section of the Internal Revenue Code.

The United States Tax Court sustained the Commissioner, holding:

> "The expenditures for research and experimentation were not paid in connection with the trade or business of the partnership, or of Snow, and are not deductible under Section 174." (Appendix, p. 13)

The United States Court of Appeals for the Sixth Circuit sustained the Tax Court's decision:

> ". . . we hold that the expenditures sought to be deducted by Burns Investment Company in 1966 were 'pre-operating' expenses and are not deductible under Section 174." (Appendix p. 40)

The facts involved are not complex and may be briefly stated.

In 1966, a limited partnership d/b/a Burns Investment Company was formed in Cincinnati, Ohio. The partnership consisted of one general partner, D. H. Trott, and several limited partners, of whom Snow was one. Snow, who at that time was an executive with The Procter & Gamble Co. in Cincinnati, invested $10,000 in Burns. (Snow had previously joined with Trott in the formation of two other limited partnerships, Echo Development Company in 1965, and Courier Enterprises in 1965. Both had also been formed to develop and market new products, a telephone answering device ("Echo") and an electronic tape recorder ("Courier"). Although "Echo" and "Courier" also claimed deductions for Section 174 expenditures,

the Commissioner chose only to challenge the expenditures claimed by "Burns." Presumably this discrepancy in treatment was motivated by the fact that "Echo" and "Courier" both had products which were in a more advanced stage of development and which were then held available for sale or licensing.)

Burns was organized to further develop and perfect a leaf and/or trash burner. Trott, the inventor and general partner, had conceived the idea for the trash burner sometime in 1964. He had made and tested a number of prototypes between 1964 and 1966. In December of 1965, he received advice from patent counsel that there were several features which were patentable. In early 1966, however, he was advised that the burner as a whole had not been sufficiently perfected to be patented and that additional work would be necessary to modify the model so that it could become a marketable product.

In order to secure the funds necessary for this further modification and development, Trott, in July of 1966, formed Burns Investment Company. Snow and two other limited partners contributed the capital; Trott contributed all right, title, and interest in the trash burner. During the period between July 1, 1966 and December 31, 1966, Burns paid a total of $36,780.44 for development work on the burner. There is no dispute as to the amount claimed or as to the fact that these expenses were incurred for research and development purposes.

During the year 1966, Burns reported no sales of the trash burner or of any other product. The burner was still in the process of being perfected and was simply not yet marketable.

In the succeeding years (which are not in issue here) the development of the burner continued. An application for a patent was filed on June 10, 1968. A patent was

issued on March 3, 1970, to Trott, the general partner. Prior to 1970, Burns was incorporated under the name of Burns Investment Corporation to produce and market the trash burner under the trade name "Trash-Away." Snow has continued to participate in the venture and has served Burns Investment Corporation, since its incorporation, as Chairman of the Board. The "Trash-Away" is currently being produced and marketed by Burns Investment Corporation.

REASONS FOR GRANTING WRIT

1. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER COURTS OF APPEALS AS TO THE PROPER INTERPRETATION OF 26 USC SECTION 174.

Petitioner Snow, in the proceedings below, relied heavily upon the Fourth Circuit case of *Cleveland* v. *Commissioner,* 297 F 2d 169 (4th Circuit, 1961). In *Cleveland,* an attorney (Cleveland) who was interested in experiments carried on by one of his clients (Kerla), began to lend Kerla financial assistance. Kerla was involved in trying to develop a new type of liquid binder. Shortly after the enactment of Section 174, a formal trust agreement was entered into whereby Cleveland purchased a participating one-half interest in the invention for the past loans. In 1955 and 1956, Cleveland took deductions under Section 174 for funds advanced subsequent to the agreement attributable to research and development. *Cleveland's* facts do not indicate that the binder was ever actually marketed or that any patent was ever applied for. The Commissioner and the Tax Court held that these advances were not deductible. The Court of Appeals for the Fourth Circuit reversed the Tax Court holding:

"In this instance the decision of the parties to the agreement to define their relationship so as to take advantage of the benefits of the statute was in harmony with the purpose of the enactment to encourage expenditures for research and experimentation." (at page 171)

The Sixth Circuit, however, chose not to follow *Cleveland,* stating:

"We are by no means certain that *Cleveland* involved any dispute over whether the joint enterprise therein concerned was engaged in a trade or business. If, however, it be read as in conflict with our view in this case, we prefer the logic of the later Fourth Circuit holding in *Richmond Television Corp.* v. *United States,* 345 F 2d 901, (4th Cir., 1965), to the Fourth Circuit's earlier holding in *Cleveland.*" (Appendix, p. 40)

Given the similarity between the facts of the two cases, Snow respectfully submits that there can be no doubt that *Cleveland* and *Snow* are in conflict. In each case an investor (Cleveland and Snow) supplied the capital so that an inventor (Kerla and Trott) could continue to develop a new product. In both cases the product was not yet marketable at the time of the investment. In neither case did the partnership (*Snow*) or joint venture (*Cleveland*) have an established trade or business in another field of endeavor. In both cases the deductions were claimed under Section 174. In *Cleveland,* the Fourth Circuit allowed these deductions. In *Snow,* the Sixth Circuit disallowed these deductions.

Snow contends, furthermore, that the Sixth Circuit's statement, supra, that it preferred the Fourth Circuit's later holding in *Richmond Television* does nothing to reconcile this conflict. Snow points out that *Richmond*

Television involved the disallowance of a deduction claimed under Section 162 of the 1954 Internal Revenue Code rather than Section 174. The Fourth Circuit, in deciding *Richmond,* surely was not aware that it was in any way overruling, qualifying, or even refining their *Cleveland* decision. A reading of *Richmond* shows that that case never so much as mentions the *Cleveland* case. This omission seems quite proper since the issue in *Richmond* was whether "start-up" expenses were "ordinary and necessary" and, therefore, deductible under Section 162. *Cleveland* and *Snow,* on the other hand, concern the deductibility of research and experimental expenses under Section 174.

Cleveland, therefore, remains to be the leading "Section 174 case" in the Fourth Circuit. The *Snow* decision thus creates a decided conflict between the Fourth and Sixth Circuits.

In addition to this Circuit conflict, a reading of Tax Court decisions dealing with Section 174 reveals a decided lack of consistency in the courts' interpretations of that section. A decision by this Court in this area would, therefore, be extremely helpful in insuring that taxpayers in different sections of the country will receive the uniform treatment which is vital to the administration of a just revenue system.

2. THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING EFFORTS OF SMALL AND BEGINNING BUSINESSES TO INVOKE SECTION 174 OF THE INTERNAL REVENUE CODE OF 1954. IN ADDITION, THE DECISION BELOW IS ONE OF MAJOR IMPORTANCE IN THAT IT STRONGLY TENDS TOWARD FOSTERING BIG BUSINESS WHILE INHIBITING SMALL, NEWLY-ORGANIZED COMPETITION.

Section 174 was intended to be a liberalizing provision to allow expenditures which otherwise would have to be capitalized to be deductible in the year incurred. The legislative history of Section 174 indicates a broad purpose to provide an economic incentive, especially for small and growing businesses, to engage in the search for new products and new inventions. The measure was initially introduced in Congress in 1951 "to clarify the existing confusion in respect of tax treatment of such expenditures, and to prevent tax discrimination between large businesses having continuous programs of research and small or beginning enterprise." 97 Cong. Rec. 4326A (1951). (Extension of Remarks of Representative Comp.) The remarks of Mr. Reid of New York, Chairman of the House Committee on Ways and Means addressed to the House during consideration of the H. R. 8300, the Bill embodying the Internal Revenue Code of 1954, indicates the broad purpose of Section 174 as finally enacted:

> "Research and Development expenditures: Present law contains no statutory provisions dealing with the deduction of these expenses. The result has been confusion and uncertainty. Very often, under present law, small businesses which are developing new products and do not have established research departments are not allowed to deduct their expenses despite the

> fact that the large and well-established competitors can obtain the deduction . . . This provision will greatly stimulate the search for new products and the new inventions upon which the future economic and military strength of a Nation depends. It will be particularly valuable to small and growing businesses." 100 Cong. Rec. 3425 (1954).

A small business like Burns whose entire energies are devoted to a product development effort would seem to be precisely the kind the company Congress sought to bring within the reach of Section 174. The decision by the Sixth Circuit in *Snow,* however, makes that section unavailable to this type of business, while preserving its availability to "large and well-established competitors."

The Sixth Circuit held in *Snow* that the research and development expenditures incurred by Burns were not deductible because "as of 1966 it (Burns) had no product to offer." (Appendix, p. 38) In reaching this conclusion, the Sixth Circuit placed heavy emphasis upon a number of established cases dealing with Section 162 of the 1954 Code, notably *Deputy* v. *Dupont,* 308 U.S. 488 (1940) and *Richmond Television,* supra. These cases focus on the "existing sales" vs. "pre-operating expenses" tests to decide the availability of Section 162 deductions. The legitimacy of deciding a Section 174 case by using tests articulated in the context of a different Code Section is a matter of critical importance to the question presented in this petition.

Section 162 allows deductions for expenses which are "ordinary and necessary in carrying on a trade or business." The phrase "carrying on a trade or business" has been in statutory existence since 1928, first as 23 (a) of the Internal Revenue Code of 1928, today as 162 (a) of the 1954 Code. It is, therefore, reasonable to assume that Congress was well aware of its existence, and yet Congress chose to use

a different phrase — "in connection with its trade or business" — for the purposes of Section 174. Section 174, neither in the Code itself nor in the Regulations promulgated thereunder, makes any reference to Section 162. Had Congress wished the two sections to be construed in the same manner, it would have been a simple matter to so indicate. In contrast to Section 174, there are other code sections and regulations which do make specific reference to the requirements of Section 162. See, for example, Regulation 1.512 (a) -1 (b).

The use of Section 162 tests to decide Section 174 cases is even less justified when one considers the purposes behind the two sections. For while the "prepatory" vs. "existing" test seems both logical and proper in terms of "ordinary and necessary" business expenses (Section 162), it is illogical on its face when applied to "reasearch and development" expenses (Section 174). Surely the statutory phrase "research and development" presupposes a product which is not yet in a marketable condition, and yet the Sixth Circuit insists on existing sales of the product in order to qualify research expense deductions.

The practical results of the Sixth Circuit's interpretation of Section 174 can be easily seen. An established company with existing sales of a given product may refine and improve that product through research and experimentation and be permitted to deduct the costs of such research. An established company with existing sales of any given product may attempt to develop a completely new product or idea and will be permitted to deduct the costs of such development. (See *Best Universal Lock Co.,* 45 T.C. 1 (1965), acq. 1966-1 Cum. Bull. 1) A new company with a new idea such as "Burns," however, is unable to deduct these expenses.

The "existing products test," therefore, clearly discriminates against companies formed to develop new products

and works to the advantage of companies with existing products. The construction of Section 174 adopted by the Sixth Circuit would tend to foster and perpetuate monopoly by frustrating the development of inventions or improvements by newly-organized competitors of established businesses. American Economic History gives ample testimony to the importance of a business which begins with only a new and ingenious idea. Polaroid and Xerox are examples of enterprises organized to develop new ideas which were initially rejected by established companies.

Section 174 was originally enacted as an aid to the growth and development of small, new businesses like Burns. The decision below by the Sixth Circuit completely contradicts that purpose by making Section 174 available only to established companies. Petitioner Snow begs this Court to take the opportunity presented by this case to announce a construction of Section 174 which is in harmony with the section's intent.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Sixth Circuit.

Respectfully submitted,

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Counsel for Petitioner

APPENDIX

[CCH Dec. 31,449]

EDWIN A. SNOW AND HELEN B. SNOW v. COMMISSIONER

Docket No. 7125-70. 58 TC—, No. 60.

Filed June 30, 1972. Cincinnati, Ohio.

[Code Sec. 174(a)]

[Business expenses: Research and experimentation: Existence of business v. preparatory costs.] Snow, an executive in a large corporation, invested money and gave advisory services in three limited partnerships formed in 1965 and 1966, each to carry on research and experimentation upon a particular invention with a view to profit. In 1966 two of the inventions were held for licensing to manufacturers but none were so licensed in that year. The third invention, a trash burner, was not sufficiently developed to be ready for sale or licensing in 1966. The partnership developing this invention had no income in 1966 but reported a net loss by reason of a deduction claimed under section 174 (a), I. R. C. 1954, for expenditures for research and experimentation. Snow claimed his pro rata share of such loss for 1966.

Held: The expenditures for research and experimentation were not paid in connection with the trade or business of the partnership or of Snow, and are not deductible under section 174. *John F. Koons* [Dec. 24,760], 35 T. C. 1092 (1961).

Harold W. Walker, and Burgess L. Doan, 522 Dixie

Terminal Bldg., Cincinnati, Ohio, for the petitioner. Rudolf L. Jansen, for the respondent.

BRUCE, Judge: Respondent determined a deficiency of $6,247 in the income tax of the petitioners for the calendar year 1966. Edwin A. Snow was a member of a partnership which reported a net loss for 1966 by reason of a deduction claimed under section 174, Internal Revenue Code of 1954, for expenditures for research and experimentation. Respondent disallowed the pro rata share of such loss claimed by the petitioners. The sole issue for decision is whether such expenses are properly deductible. Some facts are stipulated.

Findings of Fact

The stipulation of facts and the exhibits attached thereto are incorporated by reference.

Edwin A. Snow and Helen B. Snow are husband and wife. They filed a joint Federal income tax return for the calendar year 1966 on the cash basis with the district director of internal revenue at Cincinnati, Ohio. They were residents of Cincinnati on the date of the filing of the petition herein.

Edwin A. Snow is a graduate of Stanford University and Harvard Graduate School of Business. He holds degrees of B. A. in Economics and M. A. in Business Administration. He took no engineering courses and has never applied for a patent. He has been employed by Procter & Gamble Company since 1933. His work was in advertising and marketing and later in management. In 1966 he was executive vice president and a member of the Board of Directors of Procter & Gamble.

David H. Trott was an employee of Procter & Gamble Company for 22½ years, resigning in 1963. His work was

in advertising and marketing and general management. He has been acquainted with Snow since about 1942. He holds a degree of B. A. in Liberal Arts. He has no degree in engineering. He had no training or experience in engineering prior to 1963.

In 1964 Trott bought a 25 percent interest in Crossbow, Inc. The other stockholders were Robert Boggild and William Dale. This corporation did shop work in machine and fabricating. It had some 25 customers for whom shop work was done. It occupied a building at 8120 Blue Ash Road, Cincinnati, which had 5,000 square feet of floor space on the ground floor, a basement of 4,000 square feet, and various items of shop and manufacturing equipment. On the main floor 1,000 square feet were separated for office and designing work. Later Trott owned a 50 percent interest in Crossbow and in December 1965 became sole owner.

At the time Trott acquired an interest in Crossbow his associates were experimenting upon a telephone answering device. Trott took part in developing the project further. Trott had conceived the idea of a tape recording device and the engineers and employees of Crossbow worked on that project. Trott had also conceived the idea of a leaf burner or trash burner and Crossbow's employees worked at making models of that for experiment and development.

In March 1965 Snow and certain others agreed to invest funds in the research and development of the telephone answering device and the tape recording device upon which Trott and his associates were conducting experiments. A certificate of limited partnership under the laws of Ohio was signed by Trott, Boggild and Dale, as general partners, and George L. Sterne, Edwin A. Snow, Trustee, Edward J. Noble, L. S. Brucker, Jr., Trustee, and Eugene W. Gilson, as limited partners, under the name "Echo Development Company" to develop the telephone answering

device. Sterne contributed all right, title and interest to the product concept. Snow, Noble, Brucker and Gilson each contributed $15,000. Trott and Sterne were each to have a 20 percent interest in the profits. The others were each to have a 10 percent interest. The principal place of business was to be at 8120 Blue Ash Road, Cincinnati.

A certificate of limited partnership under the laws of Ohio was also signed in March 1965 by Trott, Boggild and Dale as general partners, and Snow, Trustee, Noble, Brucker, Trustee, and Gilson as limited partners to be conducted under the name of "Courier Enterprises." This was to develop the tape recording device. The limited partners each contributed $5,000 in cash. Trott was to have a 40 percent interest in the profits, the other partners were each to have a 10 percent interest. The principal place of business was to be at 8120 Blue Ash Road, Cincinnati.

In April 1965 Trott wrote Boggild, then president of Crossbow, as follows:

> This outlines the basis on which Crossbow will undertake development work on a compact battery-operated tape recorder, designated by the code name CINCH, on behalf of the partnership owning all rights to same, known as Courier Enterprises.
>
> 1. Crossbow will develop CINCH to the working model stage, and as far beyond as available money may afford.
>
> 2. All work will be done on a time and materials basis, at the following labor rates:

Drafting	$ 6.00 per hour
Shop	$ 8.00 per hour
Design	$ 9.00 per hour
Development Engineer	$12.00 per hour
Chief Project Engineer	$20.00 per hour

It is my understanding that the above rates are competitive in the community to those charged by other shops engaged in similar work.

3. Crossbow will exert its best efforts to complete the assignment within the funds which Courier Enterprises has available for this purpose — $20,000.00 in total.

4. Crossbow will make every effort to complete the assignment within nine months from this date. If in the sole opinion of Courier Enterprises the progress of the project is unsatisfactory, it may remove the project from Crossbow responsibility after one year from this date.

5. Any equipment purchased by Crossbow solely for use in connection with this assignment, will be charged to the project and will become the property of Courier Enterprises.

6. All rights to patentable features, and to patents thereon, developed by Crossbow specifically in the course of development work on CINCH, will become the property of Courier Enterprises.

7. Courier Enterprises will be billed monthly for time and materials. No advance payments will be made. On occasion, however, Crossbow may request a cash advance when necessary to cover a substantial cash outlay by Crossbow, in the amount of this outlay.

8. The confidential nature of Crossbow's work on CINCH will be guarded insofar as possible by written security agreements signed by all Crossbow employees.

Please initial one copy of this letter and return it to me, as evidence of your agreement.

Crossbow carried out research and experimental work for Echo on the telephone-answering device upon the same basis.

Trott reported to the other partners in Echo as of March 1, 1966, as follows:

ECHO DEVELOPMENT CO.
MARCH 1, 1966 REPORT

This should be the last "progress report" on EAR prototype development.

Minor modifications to the instrument are being made by the consulting electronics engineer we retained to give the audio system a final check. These will complete all work on the device itself.

Patent counsel advises he will have the patent application completed this month.

Final costing and other paper work has been slowed by the absence due to illness of Mr. Boggild, but this, too, will be finished shortly.

Before March is out, therefore, we hope to present to the partnership the results of this development project and to secure agreement on the best manner in which to exploit it commercially.

[signature omitted]

In 1966 the telephone answering device and the tape recording device had been developed to the stage of being ready for sale. The partners hoped to license some manufacturers to build and market them. An application for a patent on the telephone answering device was filed in August 1966 and a patent was issued in November 1969 to R. Boggild. An application for a patent on the tape recording device was filed in November 1967 and a patent was issued in October 1969 to H. E. Hancock.

Crossbow also carried out research and development work on the leaf burning device as directed by Trott, upon the same cost basis as work for Echo and Courier. Altogether some 26 or more models were made and tried out in 1964 and thereafter. It was not developed to the point of being ready for sale in 1966.

In December 1965 patent counsel for Trott wrote him concerning the possibilities of securing patent protection

for the device, then referred to as a "leaf burner" or a "cyclone burner." Counsel noted several features which he thought were patentable. He wrote:

> This is a report of the supplementary patentability search which we have made with respect to your cyclone burner invention. As I understand it, the original search made in late 1964 was reported orally. I believe at that time you were advised that there was no chance for patent protection on the broad concept of a cyclone furnace used in conjunction with a vacuum cleaner type leaf collector mounted on a rolling platform.
>
> Your invention has progressed from the time of that report in the direction of improving the burning apparatus and you have improved it in three major respects. First, you mount a diverter at the top of a primary combustion chamber and create above it a secondary combustion chamber. The diverter has a central passageway projecting into the primary combustion chamber. Distribution vanes are secured to the top of the passageway and cause gases and entrained solids to be swirled in the secondary chamber.
>
> The second feature might be called your ignition structure. This comprises a grate at the lower end of the primary combustion chamber in combination with vanes extending across the lower end of the combustion chamber and spaced above the grate. A secondary air inlet passageway is connected to the lower end of the combustion chamber below the grate. In operation, a few glowing briquettes are placed on the grate and the secondary air causes them to glow brightly and ignite any solids contacting them. The vanes serve to break up the high velocity swirling air in the main combustion chamber, thereby creating in the space between the vanes and the grate a more or less gently flowing air which permits the solids to remain in contact with the briquettes for a sufficient length of time for their ignition.

The third feature comprises the use of a cooling jacket surrounding the main and secondary combustion chambers with provision for bleeding secondary air from the main intake blower to the jacket. The important aspect of this feature is that a large volume of air is required to bring the solids into the burner but preferably that volume of air should be diminished before going into the combustion chamber for too much air will have an adverse effect on the burning. By taking secondary air from the main intake, you are able to provide (a) sufficient air to bring the solids into the system, (b) sufficient air for cooling, and (c) diminished air, as desired, in the combustion chamber.

We are of the opinion that the Patent Office would be justified in granting protection to the features as outlined above. * * *

I am not sure that you are ready to have the patent application prepared. If you are in the process of constructing a prototype utilizing your inventive features, you may wish to delay the preparation of the application until the completion of the prototype so that the application as filed will have the benefit of any improvements and/or greater understanding of the operation obtained through the creation of the prototype.

In February 1966 Trott's patent counsel expressed the opinion that the leaf burner invention had not been sufficiently reduced to practice to be patented. Counsel stated that examination of two models and discussion of tests made showed that neither performed satisfactorily enough to be a marketable product, that one burned too hot and the other did not handle fresh leaves well, and suggested that additional work would be necessary to modify the models for the continuous leaf burning function.

In February or March of 1966 Snow orally agreed to

join in a limited partnership venture to assist Trott in financing development of the trash or leaf burning device. He was aware that patent counsel had expressed an opinion that the device was unique. Snow thought it was or could be marketable and believed that no such equipment was then on the market. He had seen the models then developed.

On July 8, 1966, an agreement to form a limited partnership under the laws of Ohio was signed by Trott, as general partner, and Snow, Eugene W. Gilson, and Thomas J. Klinedinst as limited partners. Trott was also listed as a limited partner contributing

> All right, title and interest to a product concept, individually owned by David H. Trott, more particularly described as an incinerator designed for rapid consumption and burning of tree leaves and similar combustible materials.

Gilson contributed $20,000 for an 8 percent interest in the profits. Snow and Klinedinst each contributed $10,000 for a 4 percent interest. Trott had a 50 percent interest as general partner and 34 percent as limited partner.

The partnership was to be conducted under the name of "Burns Investment Company." Its principal office and place of business was to be at 8120 Blue Ash Road, Cincinnati. Its stated purpose was the development of "a special purpose incinerator for the consumer and industrial markets." The general partner was to have the sole right of management and conduct of the business. The partnership was to commence upon the execution and delivery of a Certificate of Limited Partnership in accordance with section 1781.02 of the Ohio Revised Code. Item 9 provided:

> 9. The liability of each Limited Partner for part-

nership debts shall in no event exceed the amount of contribution stated in this agreement and the certificate as having been made by each of them.

On April 3, 1967, the partners in Burns Investment Company signed an amendment contained the following new provision:

> Notwithstanding the above percentage of interest for each partner, if the partnership experiences a net loss for any fiscal year or period, which loss reduces the total credit balance in the capital accounts of the partnership to an amount which is lesser than the total amount of cash contributed by the Limited Partners to the partnership's capital, then such portion of the net loss which causes the reduction in the contributed cash capital shall be shared solely by the Limited Partners in the same proportion that the amount of their cash contribution bears to the total amount of cash contributed by all the Limited Partners. And while there exists any reduction in the Limited Partners' contributed cash capital and the partnership experiences a net profit in the following fiscal year or period, then such portion of the net profit which eliminated such reduction and restores the total cash contributed to capital shall be shared solely by the Limited Partners in the same proportions as is set out above for the sharing of any net loss.
>
> Nothing in this Item 4 is intended to modify or change the express language of Item 9 of this agreement.
>
> The modifications made herein to the General and Limited Partners' interest in the partnership's profits and losses shall be effective for the fiscal period ending December 31, 1966 and thereafter.

During 1966 Burns Investment Company paid the following bills from Crossbow for development work on the leaf burner:

Date of Bill	Amount		Description
7-15-66	$ 8,684.44	Work 2/65— 4/66	Shop, designers, engineers, materials
7-31-66	4,215.89	Work 5/66— 7/66	Shop, engineer, materials
12- 9-66	8,863.73	Work 8/66—11/66	Shop, designers, engineers, consultant, materials
12-30-66	12,500.00	Management, 500 hours	
12-30-66	2,516.38	Balance on services	
	$36,780.44		

The management services were by Trott, the engineering services largely by Boggild. The work involved building models. The work was done by Crossbow employees, including Trott.

In 1966 Burns had no manufacturing plant of its own, and had no office or separate facility. At the Crossbow shop Burns had no telephone. There was no sign on the building concerning Burns.

When the funds amounting to $40,000 contributed to the Burns partnership by the limited partners were exhausted, Trott financed further development of the leaf burner from his own funds.

After 1966 the design of the leaf burner was changed in some particulars.

Trott filed an application for a patent on the leaf burner on June 10, 1968. A patent was issued on March 3, 1970 to Trott.

Prior to 1970 a corporation was organized under the name of Burns Investment Corporation to produce and market the leaf burner. Many of the parts of the device were made under contract and Burns assembled it. It was called the "Trash-Away," and was advertised as for burning trash as well as leaves.

The leaf burning or trash burning device, as eventually patented, was a burning chamber which could be mounted on a 20-gallon trash can, or built in a larger size for use with a 55-gallon drum. It was constructed with two openings at the top, one for the admission of forced air, the other for exhaust of the combusted gases. The top layer of the material to be burned would be ignited and forced air from a blower would hasten the burning process. The air was introduced tangentially in such a way as to utilize the principles underlying the cyclone furnace, to establish a circular pattern of air movement taking advantage of centrifugal force to restrain still solid materials from reaching the exhaust port. It was novel in burning the materials from the top down. A regulator was provided to control the volume of air used.

Burns Investment Company filed a partnership return of income, Form 1065, for the taxable period August 1, 1966 to December 31, 1966. This reported the capital as of August 1 to be $40,000, and as of December 31, to be $3,219.56, showing a loss of $36,780.44, of which Snow's share was $9,195.11. The return reported no income and claimed expenses of $36,780.44 for research and development. It stated that the company "elects to expense in the current taxable year — its first taxable year — research and development expenses pursuant to Section 174 (a)."

Burns Investment Company filed a partnership return of income for the calendar year 1967 reporting no income and no expenses. The company filed a partnership return for 1968 reporting no income, expenses of $3,217.64 for research and development and $1.92 for bank service, leaving no assets at the end of the year.

Echo Development Company filed a partnership return of income, Form 1065, for the taxable period March 16 to December 31, 1965, reporting income of $823.27 from

interest, expenses of $79,990.87, and loss of $79,167.60. The expenses included $76,592.65 as Engineering Services, Research and Development Expense, and an election was made to expense these pursuant to section 174 (a). The schedule of partners' shares of income showed that Snow paid in $15,000 of capital and made a further contribution of $6,325, and that his share of the loss was $7,916.76. Echo filed a partnership return for 1966 reporting no income, expenses of $5,628.94, including research and development expense of $5,311.51. As a result of other capital contributions, the partnership had assets of $482.68 at the end of the year 1966. Echo filed a partnership return for 1967 reporting no income and no expenses.

Courier Enterprises filed a partnership return of income, Form 1065, for the taxable period March 22 to December 31, 1965, reporting income of $377.02 from interest, expenses of $20,054.13 and loss of $19,677.11. The expenses included $19,636 as Engineering Services, Research and Development Expense, and an election was made to expense these pursuant to section 174 (a). The schedule of partners' shares of income showed that Snow paid in $5,000 of capital and his share of the loss was $1,967.71. The assets at the end of 1965 were reported as $322.89. Courier filed a partnership return for 1966 reporting no income, with expenses of $15.44. Courier filed a partnership return for 1967 showing no income and no expenses.

The petitioners reported in their income tax return for 1966 salary of Snow, dividends, interest, capital gains and losses (resulting in a net loss), income and expenses of joint venture oil operations resulting in a net loss, expenses of a thoroughbred race horse operation from which no income was derived, and partnership income or losses (all shown as losses) in the following amounts:

Partnership	Loss
Echo Development Co.	$ 563.00
Courier Enterprises	2.00
Burns Investment Co.	9,195.00
Total	$9,760.00

In 1966 Snow devoted at least 50 hours per week to his duties as an officer of Procter & Gamble. He devoted approximately 3 to 4 hours weekly, on the average, to his thoroughbred race horse operation and one hour per week to his joint venture oil operation. He devoted some time to frequent meetings and conversations with Trott concerning the inventions of the telephone answering device, the tape recorder and the trash or leaf burner. He witnessed tests of the models of the leaf burner. He gave advice in 1965 and thereafter on the possible methods of promoting and marketing the three devices when they were developed to the stage of being saleable. His meetings with Trott were sometimes at the Crossbow shop, sometimes at restaurants, and sometimes at his home or Trott's. He discussed the devices with Trott in telephone conversations. He did not seriously consider abandoning the burner device at any time.

Burns Investment Company was not engaged in trade or business in 1966. The expenses for research and experimentation upon the trash burning device paid by Burns Investment Company in 1966 were not paid or incurred in connection with the trade or business of the partnership or of Snow.

Opinion

Edwin A. Snow invested $10,000 in 1966 in the limited partnership, Burns Investment Company, which was formed to develop and market a trash or leaf burning de-

vice invented by his friend Trott. The partnership, which was managed by Trott as the general partner, used the funds paid in by Snow and other limited partners to pay expenses of research and experimentation upon the invention. The partnership elected to deduct these expenses as permitted by section 174, Internal Revenue Code of 1954.[1] The partnership return of income reported no income, but a loss on account of expenses of $36,780.44 for research and experimentation for the taxable period ended December 31, 1966. The petitioners, in their return for 1966, claimed a deduction for Snow's share of this in the amount of $9,195. Respondent determined that the deduction was not allowable to Burns Investment Company under section 174 or any other provision of the Internal Revenue Code and disallowed the deduction claimed by the petitioners.

Section 174 (a) (1) permits a taxpayer to deduct research or experimental expenditures incurred or paid "in connection with his trade or business." The related Regulations provide in section 1.174-2 (a) (1) and (2)

> The term "research or experimental expenditures" as used in section 174, means expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense. * * *
>
> (2) The provisions of this section apply not only to costs paid or incurred by the taxpayer for research

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[1] SEC. 174. RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) Treatment as Expenses.—

(1) In General.—A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

> or experimentation undertaken directly by him but also to expenditures paid or incurred for research or experimentation carried on in his behalf by another person or organization (such as a research institute, foundation, engineering company, or similar contractor).

It is Snow's position that in 1966 he actively participated in the research and development as well as the overall management of three partnerships, Burns Investment Company, Courier Enterprises, and Echo Development Company, all of which were engaged in the trade or business of developing, perfecting and obtaining patents on new products; that as a member of such partnerships, he held for sale or licensing rights to products which had been developed and were ready for manufacturing; and that, by virtue of his participation in such partnerships, he was then engaged in the business of developing, perfecting and obtaining patents on new products for commercial exploitation.

Respondent concedes that the expenditures were for research and experimentation. The issue is whether they were paid or incurred by Snow "in connection with his trade or business," or the trade or business of Burns Investment Company.[2]

Whether an individual is engaged in a trade or business is essentially a question of fact to be determined from the evidence. *Higgins* v. *Commissioner* [41-1 USTC ¶ 9233], 312 U. S. 212 (1941). It is well settled that an individual may be engaged in two or more businesses. *George A.*

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[2] See and compare *Kenneth Reiner* [Dec. 27,488(M)], 24 T. C. M. 1005 (1965) for a discussion of section 174, its purposes and application.

Butler [Dec. 25,038], 36 T. C. 1097 (1961). An individual may be engaged in business by being a partner in a business. *Flood* v. *United States* [43-1 USTC ¶ 9259], 133 F. 2d 173 (C. A. 1, 1943). In *Deputy* v. *Du Pont* [40-1 USTC ¶ 9161], 308 U. S. 488, 499 (1940), Mr. Justice Frankfurter, in a concurring opinion joined in by Mr. Justice Reed, stated that "carrying on any trade or business, * * * involves holding one's self out to others as engaged in the selling of goods or services."

Petitioners cite *Cleveland* v. *Commissioner* [62-1 USTC ¶ 9142], 297 F. 2d 169 (C. A. 4, 1961), modifying [Dec. 24,237] 34 T. C. 517 (1960), and *Best Universal Lock Co.* [Dec. 27,585], 45 T. C. (1965).

In *Cleveland* v. *Commissioner, supra,* the taxpayer, an attorney, advanced funds to Hans Kerla, an inventor, for several years to finance research and development of an inorganic liquid binding material. In 1956 the parties signed an agreement to the effect that Kerla held the invention in trust, one-half for himself, one-half for Cleveland, that they would share equally in any proceeds, that Kerla would spend full time in active experimentation upon the invention and that Cleveland would advance expenses. The Court of Appeals concluded that Cleveland was thereafter engaged with Kerla in a joint venture in the trade or business of promoting the commercial development of the invention in which Cleveland owned a one-half interest, and the advances which he made thereafter were deductible under section 174.

Petitioners point out that Snow similarly advanced funds to a partner for research and experimentation for an interest in the profits expected to be derived.

We do not consider the Court of Appeals' decision in *Cleveland, supra,* as controlling in the present case. In

the cited case the inventor had been engaged in research and experimentation upon the invention for more than 10 years, and had applied for patents. The taxpayer had made extensive loans to Kerla to finance the research, had carried on negotiations leading to the transfer or proposed transfer of rights to prospective users of the invention, and had prepared legal documents concerning such transfers. Following all this the parties agreed that Kerla held the invention in trust, one-half for himself and one-half for Cleveland. We interpreted the agreement as constituting, at most, a sale by Kerla to Cleveland of a one-half ownership in the invention in consideration of prior moneys advanced, and not as a partnership or joint venture. The agreement did not seek to characterize advances made thereafter. We concluded that all advances made by Cleveland, both before and after the agreement, were loans to Kerla expendable by him as he saw fit. The Court of Appeals agreed that the advances prior to the agreement were in the nature of loans, but interpreted the agreement as creating a joint venture and held that expenditures for research and development made thereafter were deductible. The present case is different. In 1966 Trott had hardly begun experimentation upon the trash burner, the application for a patent was not made until 1968, the advance of funds was made only in 1966 and no effort to market or sell the device was attempted until several years later. The partnership, Burns Investment Company, had as yet no trade or business in 1966 and the expenditures paid in that year were not "paid in connection with" its trade or business but were preparatory to a business which came into existence after the taxable year. *Morton Frank* [Dec. 19,702], 20 T. C. 511 (1953). *George C. Westervelt* [Dec. 15,850], 8 T. C. 1248 (1947); *Frank B. Polachek* [Dec. 20,453], 22 T. C. 858 (1954); *Richmond Television Corporation* v. *United States* [65-1 USTC ¶ 9395], 345 F. 2d

901 (C. A. 4, 1965); *Mayrath* v. *Commissioner* [66-1 USTC ¶ 9250], 357 F. 2d 209 (C. A. 5, 1966), affirming [Dec. 26,624] 41 T. C. 582 (1964); *John F. Koons* [Dec. 24,760], 35 T. C. 1092 (1961).

In *Best Universal Lock Co., supra,* a corporation in the business of making locks undertook research and experimentation upon an isothermal air compressor. Respondent contended that expenses of such research were not deductible because they were unrelated to the corporation's lock business. In holding the project an integral part of the corporation's trade or business, we said, at p. 10:

> We find nothing in the legislative history of section 174 to support respondent's contention that the section was not meant to cover research and development expenses where a corporation was seeking to develop a new product unrelated to its past line of products. An express purpose of the new section in the 1954 Internal Revenue Code was to encourage taxpayers to carry on research and experimentation, S. Rept. No. 1622, 83d Cong., 2d Sess., p. 33, and we think respondent's limited approach would prove inimical to such congressional purpose.

In *Best Universal Lock Co., supra,* the taxpayer corporation was already in a going business when it undertook research and experimentation upon the new and different item. In the present case the Burns partnership was experimenting upon its only invention and was not as yet engaged in a business as to that item.

Snow contends that because, in addition to Burns he was also a participant in Trott's other partnerships Courier and Echo, which in 1966 had inventions ready for sale or licensing, he, and Trott as well, were in the trade or business of inventing, developing and marketing patentable products, and that although the Burns invention was not

completed, it was a similar product, the research expenses of which should be deductible in accordance with the principle of *Best Universal Lock Co., supra.*

We note that there were no sales nor attempts to sell by Burns in 1966, 1967 nor 1968. There were no goods held for sale by Burns in the taxable year 1966. And if the other partnerships, Courier and Echo, and the inventions they developed may be considered in this connection there were no sales by either of them in 1966 nor 1967. While Snow said these inventions were ready for sale or licensing, there is no evidence that any effort was made to sell them. Snow testified that such a sale was Trott's function. Trott did not mention any attempt to offer them for sale.

In *Industrial Research Products, Inc.* [Dec. 26,191], 40 T. C. 578 (1963), an individual taxpayer, Knowles, claimed a deduction for expenses of a business he allegedly carried on from his home as a consulting engineer. He was a corporate executive receiving salary income. He contended that deduction of such expenses was justified by reason of his carrying on a business as an inventor. While he testified that some patents had been issued to him it was not clear that he worked on these inventions in the taxable year. We said:

> At any rate the mere working on inventions during the year in question with no activity of offering them for sale or license, would be insufficient to show engagement in an inventing business.

In *Stanton* v. *Commissioner* [68-2 USTC ¶ 9516], 399 F. 2d 326 (C. A. 5, 1968), affirming a Memorandum Opinion of this Court [Dec. 28,516 (M)], the taxpayer sought to deduct research and experimental expenditures incurred in the development of a "storm proof" boat. The Court of Appeals concluded that the taxpayer's efforts as an in-

ventor lacked that degree of continuity and regularity that is essential before an activity can be found to constitute a trade or business. The taxpayer's efforts, spread over a number of years, were irregular and sporadic; and his revenue was neglible.[3]

Although a taxpayer may be in the business of doing research and experimentation, or of being an inventor, it is necessary that this be related to the development or improvement of existing products or services, or to new products or services in connection with a going trade or business.

In *John F. Koons, supra,* the taxpayer purchased an invention and contracted with a laboratory to develop it. He claimed a deduction under section 174 for the amount paid to the laboratory. We held that these expenses were not made in connection with any existing trade or business of the taxpayer and that the undertaking involved was not in itself an existing business in the taxable year. We said, pp. 1100-1101:

> It is our view that section 174 (a) (1) applies to expenditures for research and experimentation in connection with an existing business to which such research and development is proximately related, such as the development or improvement of its existing products or services, or the development of new products and services in connection with such trade or business. We do not suggest that these generalities are all-inclusive. In the instant case, however, there was no such existing trade or business. The research and experimentation was no doubt in anticipation of the organizing of a business to make business use of

[3] *Cf. Myron E. Cherry* [Dec. 28,487(M)], 26 T. C. M. 557 (1967); *Charles H. Schafer* [Dec. 26,828(M)], 23 T. C. M. 927 (1964); *William S. Scull, II* [Dec. 26,936(M)], 23 T. C. M. 1353 (1964).

> an end product when it reached the point of commercial acceptability. At the time the invention was bought by petitioner, however, it was in a preliminary laboratory state, and petitioner entered into the so-called Development Contract in part, at least, to get the benefit of research specialists. He went no further than this in 1955, however. It is our view that this activity was preliminary to the coming into existence of a business, and did not reach the stage of an existing business in the year in question within the meaning of section 174 (a) (1). The research and development expenditures could not be "in connection with" a business which did not exist.

In the *Koons* case we held that the taxpayer was not yet in business but was merely preparing to enter a business which would commercially exploit a patent, so that the costs of developing the patent were not currently deductible.

The partnership Burns Investment Company in 1966 was not holding itself out to others as engaged in the selling of goods or services. Its research and experimentation was not related to the development or improvement of existing products or to new products in connection with an existing trade or business. *Cf. Best Universal Lock Co., supra.* It follows that Burns was not engaged in carrying on a trade or business in 1966 and that the expenditures for research and experimentation here involved were not paid "in connection with" the trade or business of the partnership or of Snow.

Decision will be entered for the respondent.

No. 72-2019

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Appeal from the Decision of the United States Tax Court.

EDWIN A. SNOW AND HELEN B. SNOW,
Petitioners-Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Decided and Filed July 17, 1973.

Before: EDWARDS and MILLER, Circuit Judges, and LAMBROS,* District Judge.

EDWARDS, Circuit Judge. Petitioners (joint taxpayers) seek review of the decision of the United States Tax Court, reported at 58 T.C. No. 60 (June 30, 1972). The Tax Court determined a deficiency of income taxes due from taxpayers in the amount of $6,247 for the taxable year of 1966 by denying that a deduction of $9,195.11 claimed by Edwin A. Snow was properly claimed as research and experimental expenditures within the scope of Section 174 of the Internal Revenue Code of 1954. In applicable part this section says:

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* Honorable Thomas D. Lambros, United States District Judge, Northern District of Ohio, sitting by designation.

§ 174. Research and experimental expenditures

(a) Treatment as expenses—

(1) In general.—A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction. 26 U.S.C. § 174 (a) (1) (1970).

The deductions claimed were for proportionate loss suffered by Snow as a partner in the Burns Investment Company, which was engaged in the research and development of a trash burner device.

Snow invested $10,000 in the Burns Investment Company and had made similar investments in two other companies (Courier Enterprises and Echo Development Company) in which an inventor named Trott was the actual principal. In relation to Burns Investment, however, Trott invested no cash. As a consequence, Trott was not entitled (under his agreement with other shareholders) to share in any tax deduction derived from the expenditure by Burns of some $36,000 on seeking to develop the trash burner in 1966, the year in which the company was formed.

The company filed a return electing to expense the research and development expenses pursuant to Section 174 (a), and claimed a loss of $36,780.44, of which appellant Snow's share was $9,195.11.

It is undisputed that Burns Investment Company was just beginning its operation in 1966 and did not sell or offer to sell any of its products during that year. Nor did it have a patent issued or pending on the trash burner, or any income from sale of licenses or any other source. Trott's first patent application on the trash burner was filed in 1968 and a patent was issued in 1970. The Tax Court held on these facts that Burns Investment was not

engaged in trade or business in 1966 and that the expenditures were not "paid in connection with" its trade or business.

The Tax Court also held that Snow was not employed in the trade or business of inventing or development of inventions because of his investment in Burns and similar investments in two other small companies similarly organized by Trott to develop two other devices.

Appellants, including amici curiae representing small business and inventors, protest the unfairness of this decision. Snow claims that he is engaged in trade or business in relation to his investments in these several companies organized to develop and exploit inventions. He also claims that his participation in Burns Investment Company by organizational management and asserted technical suggestions pertaining to the invention constituted his participating in a trade or business. In addition, he asserts (and here the amici curiae join) that any small business must start somewhere and that refusal to allow first-year development expenditures is inconsistent with the congressional purpose in adoption of Section 174, which purpose was stated in part in the Congressional Record as follows:

> [T]o precent tax discrimination between large businesses having continuous programs of research and small or *beginning* enterprises. . . . 97 Cong. Rec. 4326A (1951) (Remarks of Rep. Camp). (Emphasis added.)

One other fact should be added. Snow had an income in 1966 at his principal occupation as an Executive Vice President of Procter & Gamble in excess of $200,000. As a consequence, if Section 174 applied, his investment in Burns was made as a high bracket taxpayer. Thus, as is so frequently true, two laudable public purposes are in direct conflict: 1) the Congressional purpose of stimulating

research and development, including research and development on the part of inventors and small businessmen, and 2) the desirability of strict interpretation of tax laws so as to prevent unintended tax shelters.

The Tax Court founded its decision of this case on the conclusion that neither basis of Snow's claim for deductions constituted expenditures "paid in connection with a trade or business" as that phrase had been construed at the time of the Congressional enactment of Section 174.

We agree with the Tax Court that "the issue is whether they [the expenditures for research and experimentation] were paid or incurred by Snow 'in connection with his trade or business' " or the trade or business of Burns Investment Company.

The best known definition of these critical terms is that of Mr. Justice Frankfurter in a concurring opinion in *Deputy* v. *DuPont,* 308 U.S. 488, 499 (1940), where he said, " '. . . carrying on any trade or business,' . . . involves holding one's self out to others as engaged in the selling of goods or services." This definition was quoted and adopted by the Fourth Circuit. *Helvering* v. *Highland,* 124 F.2d 556 (4th Cir. 1942). The Fifth Circuit employed similar language, but added that "extensive activity over a substantial period of time" was required. *Stanton* v. *Commissioner,* 399 F.2d 326, 329 (5th Cir. 1968).

It seems clear to us, as it did to the Tax Court, that Burns Investment Company in 1966 was not holding itself out to others as being engaged in the selling of goods and services. It was engaged, of course, in experimental work preparatory to going into business, but the expenditures were not made (as required by Section 174) "in connection with [its] trade or business," since as of 1966 it had no product to offer.

In a somewhat different fact situation, Judge Sobeloff of the Fourth Circuit, construed the language "carrying on any trade or business" in the context of Section 162 (a) dealing with ordinary and necessary business expenses:

> The uniform[6] teaching of these several cases is that, even though a taxpayer has made a firm decision to enter into business and over a considerable period of time spent money in preparation for entering that business, he still has not "engaged in carrying on any trade or business" within the intendment of Section 162 (a) until such time as the business has begun to function as a going concern and performed those activities for which it was organized.[7]
>
> Applying this rule, we are of the view that there was no basis in the evidence for a charge permitting the jury to find that the taxpayer was in business during the period in question. We are of the opinion, therefore, that the District Court was in error in failing to hold as a matter of law that Richmond Television was not in business until 1956, when it obtained the license and began broadcasting. Until then there was no certainty that it would obtain a license, or that it would ever go on the air. Since all of the expenditures underlying the disputed deductions were made before the license was issued and broadcasting commenced, they are "pre-operating expenses," not deductible under section 162 (a).

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[6] Southeastern Express Co., 19 B.T.A. 490 (1930) the only authority *contra*, has not been followed or even mentioned in later Tax Court cases.

[7] Compare concurring opinion of Mr. Justice Frankfurter, Deputy v. DuPont, 308 U.S. 498, 499, 60 S.Ct. 363, 369, 84 L.Ed. 416 (1940), "'* * * carrying on any trade or business,' * * * involves holding one's self out to others as engaged in the selling of goods or services." See also the following cases construing the terms "trade or business" as used in section 174(a) (1), Internal Revenue Code of 1954, 26 U.S.C.A. § 174(a) (1) (1955), dealing with research and experimental expenses: Koons v. Commissioner of Internal Revenue, 35 T.C. 1092 (1961), "'trade

or business' presupposes an existing business with which the taxpayer is directly connected"; Mayrath v. Commissioner of Internal Revenue, 41 T.C. 582 (1964), "'trade or business,' is used in the practical sense of a going trade or business."

Richmond Television Corp. v. *United States,* 345 F.2d 901, 907 (4th Cir. 1965).

Similarly, in our instant case we hold that the expenditures sought to be deducted by Burns Investment Company in 1966 were "pre-operating" expenses and not deductible under Section 174. We cannot hold that the comment previously quoted from Representative Camp concerning "beginning enterprises" demonstrates a Congressional intent to set aside the settled interpretation of the language "trade or business" as used in Section 174.

Appellants rely upon *Cleveland* v. *Commissioner,* 297 F.2d 169 (4th Cir. 1961). We are by no means certain that *Cleveland* involved any dispute over whether the joint enterprise therein concerned was engaged in a trade or business. If, however, it be read as in conflict with our view in this case, we prefer the logic of the later Fourth Circuit holding in *Richmond Television Corp.* v. *United States, supra,* to the Fourth Circuit's earlier holding in *Cleveland.*

Snow also contends that he should be allowed to deduct these same expenditures (even if Burns is not held to be in business in 1966) because he was himself engaged in the business of developing inventions.

Concerning this contention of Snow's, the Tax Court said:

> Snow contends that because, in addition to Burns, he was also a participant in Trott's other partnerships, Courier and Echo, which in 1966 had inventions ready for sale or licensing, he, and Trott as well, were in the trade or business of inventing, developing and marketing patentable products, and that although the

Burns invention was not completed, it was a similar product, the research expenses of which should be deductible in accordance with the principle of *Best Universal Lock Co., supra.*

We note that there were no sales nor attempts to sell by Burns in 1966, 1967 nor 1968. There were no goods held for sale by Burns in the taxable year 1966. And if the other partnerships, Courier and Echo, and the inventions they developed may be considered in this connection there were no sales by either of them in 1966 nor 1967. While Snow said these inventions were ready for sale or licensing, there is no evidence that any effort was made to sell them. Snow testified that such a sale was Trott's function. Trott did not mention any attempt to offer them for sale.

* * *

In *Stanton* v. *Commissioner,* 399 F. 2d 326 (C.A. 5, 1968), affirming a Memorandum Opinion of this Court, the taxpayer sought to deduct research and experimental expenditures incurred in the development of a "storm proof" boat. The Court of Appeals concluded that the taxpayer's efforts as an inventor lacked that degree of continuity and regularity that is essential before an activity can be found to constitute a trade or business. The taxpayer's efforts, spread over a number of years, were irregular and sporadic, and his revenue was negligible.[3]

Although a taxpayer may be in the business of doing research and experimentation, or of being an inventor, it is necessary that this be related to the development or improvement of existing products or services, or to new products or services in connection with a going trade or business.

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[3] Cf. *Myron E. Cherry,* 26 T.C.M. 557 (1967); *Charles H. Shafer,* 23 T.C.M. 927 (1964); *William S. Scull, II,* 23 T.C.M. 1353 (1964).

While it is true that a taxpayer may be engaging in more than one business, *George A. Butler,* 36 T.C. No. 1097 (Sept. 19, 1961), Snow's activities as shown by this record were clearly not such as to warrant his claiming to be engaged in the business of inventing. A somewhat less unsubstantial claim might be an assertion that he was engaged in the business of development of inventions by investment. In this connection the record shows that he had made minority stockholder investments in three companies ($10,000 in Burns, $5,000 in Courier, and $15,000 in Echo). In 1966 none of these companies had a product for sale to the public, although Courier and Echo had each developed a device to the point where they were available for licensing.

If investing in development of inventions could properly be held to be carrying on a trade or business, we would agree with the Tax Court that Snow's investment activities in relation to these three companies were not sufficiently continuous or regular enough when taken together to represent his engaging in carrying on a trade or business.

We believe, however, that the Supreme Court decision in *Whipple* v. *Commissioner,* 373 U.S. 193 (1963), forecloses our consideration of Snow's claim to be engaging in a trade or business as an investor in inventions. In *Whipple* the taxpayer was engaged full time (not sporadically in time off from a $200,000 executive post) in management of his investments in corporations in which he had a *majority* interest. He claimed a deduction for a bad debt on an unpaid loan he had made to one of the corporations which went bankrupt. The Supreme Court rejected the bad debt deduction under Section 23(k) (1) because it held taxpayer's activities in investing and managing his investments did not constitute a trade or business.

The Court said:

Devoting one's time and energies to the affairs of a corporation is not of itself, and without more, a trade or business of the person so engaged. Though such activities may produce income, profit or gain in the form of dividends or enhancement in the value of an investment, this return is distinctive to the process of investing and is generated by the successful operation of the corporation's business as distinguished from the trade or business of the taxpayer himself. When the only return is that of an investor, the taxpayer has not satisfied his burden of demonstrating that he is engaged in a trade or business since investing is not a trade or business and the return to the taxpayer, though substantially the product of his services, legally arises not from his own trade or business but from that of the corporation. Even if the taxpayer demonstrates an independent trade or business of his own, care must be taken to distinguish bad debt losses arising from his own business and those actually arising from activities peculiar to an investor concerned with, and participating in, the conduct of the corporate business.

If full-time service to one corporation does not alone amount to a trade or business, which it does not, it is difficult to understand how the same service to many corporations would suffice. To be sure, the presence of more than one corporation might lend support to a finding that the taxpayer was engaged in a regular course of promoting corporations for a fee or commission, see Ballantine, Corporations (rev. ed. 1946), 102, or for a profit on their sale, see *Giblin* v. *Commissioner*, 227 F. 2d 692 (C. A. 5th Cir.), but in such cases there is compensation other than the normal investor's return, income received directly for his own services rather than indirectly through the corporate enterprise, and the principles of *Burnet, Dalton, du Pont* and *Higgins* are therefore not offended. On the other hand, since the Tax Court found, and the petitioner does not dispute, that there was no intention here of developing the corporations as going businesses

> for sale to customers in the ordinary course, the case before us inexorably rests upon the claim that one who actively engages in serving his own corporations for the purpose of creating future income through those enterprises is in a trade or business. That argument is untenable in light of *Burnet, Dalton, du Pont* and *Higgins,* and we reject it. Absent substantial additional evidence, furnishing management and other services to corporations for a reward not different from that flowing to an investor in those corporations is not a trade or business under § 23 (k) (4). We are, therefore, fully in agreement with this aspect of the decision below. *Id.* at 202-03. (Footnotes omitted.)

Under this holding we feel compelled to affirm the denial of the deductions sought by Snow as a result of his investment and managerial activities in the three companies concerned.

For the reasons set forth above, we affirm the judgment entered by the Tax Court. We have not sought to distinguish between those aspects of the Tax Court's decision which we affirm because they are findings of fact which are not clearly erroneous, *Commissioner* v. *Duberstein,* 363 U.S. 278, 289-91 (1960), and those which we agree with as conclusions of law since we would affirm all relevant findings and conclusions on either basis.

No. 73-641

In the Supreme Court of the United States

OCTOBER TERM, 1973

EDWIN A. SNOW AND HELEN B. SNOW,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

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COMMISSIONER OF INTERNAL REVENUE

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MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The sole question presented in this federal income tax case is whether petitioners were entitled to deduct a pro rata share of amounts claimed by their partnership as research and development expenditures under Section 174 of the Internal Revenue Code of 1954. Both courts below held that the expenditures in question were not deductible because they were not incurred in connection with a "trade or business."

1. Petitioner[1] was an executive vice president and member of the board of directors of Proctor & Gamble

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[1] References to petitioner are to Edwin A. Snow only. Helen B. Snow is included as a petitioner solely because she filed a joint income tax return with her husband for the taxable year in issue.

Company. In 1966, he invested $10,000 for a four percent interest in a limited partnership known as Burns Investment Company, which had been organized to assist in financing the development of a trash burning device (Pet. App. 14, 20-21). Petitioner and two other limited partners supplied the financing; development of the invention was to be performed by the general partner (Pet. App. 23).

In 1966, Burns Investment Company had no manufacturing plant, no office or separate facility, no separate telephone, and no sign on the premises it shared with another partnership. During that year most of the funds contributed by the limited partners were exhausted, and thereafter the general partner financed the further development of the device. The partnership did not file a patent application until June 10, 1968, and no patent was issued until March 3, 1970. A corporation was subsequently organized to produce and market the device (Pet. App. 23). During 1966, petitioner devoted at least 50 hours per week to his Proctor & Gamble employment, an additional three to four hours to a race horse operation, and another hour to a joint venture oil operation. He devoted some time to meetings and conversations with the inventor about the trash burner and witnessed some tests on models of the device (Pet. App. 26).

The partnership filed a partnership return for the taxable period August 1, 1966 through December 31, 1966, showing capital as of August 1 to be $40,000, claiming research and development expenses of $36,780.44, and reflecting no income. It thereby showed a loss of $36,780.44, which the company elected "to expense in the current taxable year" as Section 174 research and development expenses (Pet. App. 24). Petitioner reported his share, $9,195.11, as a partnership loss

deduction on his income tax return for 1966 (Pet. App. 24, 25-26). On audit, the Commissioner of Internal Revenue disallowed the deduction on the ground that neither petitioner nor the partnership met the "trade or business" requirement of Section 174. The Tax Court sustained the Commissioner's determination (Pet. App. 26-34), and the court of appeals affirmed (Pet App. 35-44).

2. Section 174 of the Internal Revenue Code provides that "[a] taxpayer may treat research or experimental expenditures which are paid or incurred by him * * * in connection with his trade or business as expenses which are not chargeable to captial account. The expenditures so treated shall be allowed as a deduction."

The judicial decisions interpreting this provision and the Treasury Regulations uniformly require that a taxpayer must be engaged in a trade or business in order to qualify for a research and development expenditure deduction. Treasury Regulations on Income Tax (1954 Code), §§1.174-1 and 1.174-2; *Stanton* v. *Commissioner,* 399 F. 2d 326 (C.A. 5); *Mayrath* v. *Commissioner,* 357 F. 2d 209 (C.A. 5), affirming 41 T.C. 582; *Koons* v. *Commissioner,* 35 T.C. 1092.

The term "trade or business" has a single meaning in all sections of the Code, *Cooper Tire & Rubber Co. Employees' Retirement Fund* v. *Commissioner,* 36 T.C. 96, affirmed *per curiam,* 306 F. 2d 20 (C.A. 6), and this Court has defined it, for purposes of other tax statutes, as "holding one's self out to others as engaged in the selling of goods and services." *Deputy* v. *DuPont,* 308 U.S. 488, 499. It has further held that the question whether a trade or business exists is one of fact. *Higgins* v. *Commissioner,* 312 U.S. 212. Qualification as a "trade or business" activity requires the existence of a genuine

profit motive (*Lamont* v. *Commissioner,* 339 F. 2d 377 (C.A. 2); *Mercer* v. *Commissioner,* 376 F. 2d 708, 711 (C.A. 9)), and that the activities involved be extensive, varied, continuous, frequent and regular (*Austin* v. *Commissioner,* 298 F. 2d 583 (C.A. 2); *Wright* v. *Commissioner,* 274 F. 2d 883 (C.A. 6); *Miller* v. *Commissioner,* 102 F. 2d 476 (C.A. 9)).

In light of this standard, the holding of both courts below that petitioner did not incur the expenditures at issue in connection with his trade or business is amply justified by the undisputed facts. During the year in question, the partnership, in which petitioner was merely an investor, was not holding itself out to others as engaged in the selling of goods and services. Its research and experimentation was not related to the development or improvement of existing products or new products developed in connection with an existing trade or business. Cf. *Best Universal Lock Co., Inc.* v. *Commissioner,* 45 T.C. 1.

Moreover, the legislative history accompanying the enactment of Section 174 demonstrates that it was designed to permit a taxpayer to deduct research and experimental expenditures incurred "in connection with his trade or business" without regard to the "ordinary and necessary" standard. See H. Rep. No. 1337, 83d Cong., 2d Sess., p. 28; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 33.[2] This legislative policy explains the use

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[2] Congressman Reed of New York, Chairman of the Ways and Means Committee, emphasized this purpose during House debate on the measure when he stated that the imposition of the "ordinary and necessary" standard led often to uncertainty regarding the deductibility of such expenses, especially by "small businesses which are developing new products and do not have established research departments." 100 Cong. Rec. 3425.

of the term "not chargeable to capital account." The extraordinary or nonrecurring nature of these designated expenditures will not foreclose their current deductibility. Thus, the aim of Section 174 was to equalize the treatment of small businesses vis-a-vis large businesses and not, as petitioner asserts (Pet. 9-12), to extend the deduction to mere investors who cannot meet the "trade or business" qualification.

3. The decision below does not, as petitioner urges (Pet. 6-8), conflict with *Cleveland* v. *Commissioner,* 297 F. 2d 169 (C.A. 4). There, the taxpayer, a lawyer, had made extensive loans over a long period of time to an inventor who, for over ten years, had experimented with the invention of an inorganic liquid binding material and had applied for patents. After having made a number of advances, taxpayer entered into a trust agreement with the inventor regarding their respective interests in the compound. The Tax Court disallowed a claimed Section 174 deduction for the advances, holding that the arrangement constituted, at most, a sale by the inventor to the taxpayer of a one-half interest in the invention in consideration of past monies advanced, and that the expenditures were not made in taxpayer's trade or business. The court of appeals, however, reversed and allowed the Section 174 deduction with respect to the post-agreement advances. It characterized the agreement as creating a joint venture which it held to be a "trade or business" of the taxpayer.

Allowance of the deduction in *Cleveland* was based upon the particular facts of the taxpayer's active role in the enterprise as a business and legal advisor and negotiator as well as financier, the length of time the inventor had been engaged in his work on the binding material, and its advanced stage of development. Under

these circumstances, none of which were present in this case, the court concluded that the post-agreement expenditures were incurred in the taxpayer's "trade or business."

Moreover, unlike the decision below, the *Cleveland* opinion did not rest upon a definition of the term "trade or business." Subsequent to *Cleveland,* the Fourth Circuit decided *Richmond Television Corp.* v. *United States,* 345 F. 2d 901, relied upon by the court below, which construed the language "carrying on any trade or business" in the context of Section 162(a). There, the Fourth Circuit addressed the question of the definition of "trade or business." It held that even though a taxpayer has made a firm decision to enter into business and spends money over a considerable period of time in preparation for entering that business, he has still not engaged in carrying on a trade or business until the business begins to function as a going concern which performs those activities for which it was organized. Significantly, the court indicated that this definition was equally applicable to Section 174(a)(1) (345 F. 2d at 907, n. 7).

Accordingly, petitioner's enterprise, which had no plant, no separate office or facility, no telephone and no marketing activity during the year in question, did not meet the accepted definition of a "trade or business."

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1973.

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-641

EDWIN A. SNOW and HELEN B. SNOW,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

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In The

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BRIEF FOR PETITIONERS

OPINIONS BELOW

A. The opinion of the Court of Appeals, reported at 482 F.2d 1029, (C.A. 6, 1973), appears in the appendix to the Petition for a Writ of Certiorari at pp. 35-44 (Cert. App. 35-44).

B. The opinion of the United States Tax Court, reported at 58 T.C. 585 (1972), also appears in the appendix to the Petition for a Writ of Certiorari at pp. 13-34 (Cert. App. 13-34).

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on July 17, 1973. The Petition for a Writ of Certiorari was filed on October 12, 1973, and was granted on January 7, 1974. The jurisdiction of this Court rests on 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether a business is entitled to deduct research and experimental expenses incurred in the development of its initial product.

STATUTE INVOLVED

The Internal Revenue Code of 1954 (26 U.S.C.), Section 174: RESEARCH AND DEVELOPMENT EXPENDITURES.

"(a) Treatment as Expenses —

"(1) In General. — A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

"(2) When Method May Be Adopted —

"(A) Without Consent. — A taxpayer may, without the consent of the Secretary or his delegate, adopt the method provided in this subsection for his first taxable year —

"(i) which begins after December 31, 1953, and ends after the date on which this title is enacted, and

"(ii) for which expenditures described in paragraph (1) are paid or incurred.

"(B) With Consent. — A taxpayer may, with the consent of the Secretary or his delegate, adopt at any time the method provided in this subsection.

"(3) Scope. — The Method adopted under this subsection shall apply to all expenditures described in paragraph (1). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary or his delegate, a change to a different method is authorized with respect to part or all of such expenditures."

STATEMENT

This case involves deficiencies asserted in Federal income taxes for the taxable year 1966 in the amount of $6,247.00. The deficiency involved is attributable to an adjustment disallowing as a deduction Petitioner Snow's[1] distributive share of the net operating loss of a partnership. d/b/a Burns Investment Company ("Burns").

Burns reported a net operating loss in the amount of $36,780.44 on its 1966 Federal income tax return (Form 1065) (App. 124) of which Snow's distributive share was $9,195.00 (App. 127). The loss arose as a result of the partnership incurring and paying expenses in connection with research and development of a new product.

The Commissioner of Internal Revenue determined the research and development expenses were not allowable to Burns under Section 174 or any other section of the Internal Revenue Code.

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[1] Helen B. Snow is also listed as a petitioner herein solely because she and her husband filed a joint return in 1966.

The United States Tax Court upheld the Commissioner, stating:

> "The expenditures for research and experimentation were not paid in connection with the trade or business of the partnership, or of Snow, and are not deductible under Section 174." (Cert. App. 13).

The United States Court of Appeals for the Sixth Circuit sustained the Tax Court's decision:

> ". . . we hold that the expenditures sought to be deducted by Burns Investment Company in 1966 were 'pre-operating' expenses and are not deductible under Section 174." (Cert. App. 40).

The facts involved in this case are not complex and may be briefly stated.

In 1966, a limited partnership was formed in Cincinnati, Ohio, under the name of "Burns Investment Co." The partnership consisted of one general partner, David H. Trott ("Trott"), and three limited partners, of whom Petitioner Snow was one. Snow, who at that time was an executive with the Procter & Gamble Co. in Cincinnati, contributed $10,000 for a four percent interest in Burns. (App. 82).

Snow had previously joined with Trott in the formation of two other limited partnerships, Echo Development Company in 1965 (App. 90) and Courier Enterprises, also in 1965 (App. 93). Both Echo and Courier had been formed to develop and market new products, a telephone answering device ("Echo") and an electronic tape recorder ("Courier").

The Burns Investment Company Partnership Agreement states that "The purpose and business of the partnership shall be the development of a special purpose incinerator for the consumer and industrial markets." (App.

81). Trott, the inventor and general partner in Burns, had conceived the idea for this incinerator sometime in 1964. (App. 50). Trott made and tested a number of prototypes between 1964 and 1966. (App. 52). In December of 1965, he received a letter from patent counsel which stated that there was several features of this burner that were patentable. (App. 98-9). In early 1966, however, he was further advised by patent counsel that the incinerator as a whole had not yet been sufficiently "reduced to practice" and that additional work would be necessary to develop the prototype into a marketable product. (App. 102-3).

In order to secure the funds necessary for this further modification and development, Trott, in July of 1966, formed Burns Investment Company. Snow and the two other limited partners contributed the capital; Trott contributed all right, title and interest in the incinerator. During the period between July 1, 1966, and December 31, 1966, Burns paid a total of $36,780.44 for development work on the burner. This work involved the building and testing of a number of various models of the burner. (From 1964 on, over twenty-five different models of this incinerator have been produced and tested.) The shopwork was done for Burns by Crossbow, Inc., a corporation engaged in manufacturing, machining and fabricating. The Regulations promulgated under Section 174 specifically allow a taxpayer to deduct such payments.[2]

There is no dispute as to the amount claimed or as to

[2] Regulation 1.174-2: "(2) The provisions of this section apply not only to costs paid or incurred by the taxpayer for research or experimentation undertaken directly by him but also to expenditures paid or incurred for research and experimentation caused in his behalf by another person or organization such as, . . . an engineering company or similar contractor. . . ."

the fact that these expenses were incurred for research and development purposes. (Cert. App. 28).

In addition to his contribution of capital, during 1966 Petitioner Snow also contributed time to meetings and conversations with Trott concerning the progress not only of the incinerator but also that of the telephone answering device and tape recorder being developed by Echo and Courier. Extensive experience in advertising, marketing and management (App. 13) enabled him to offer a great deal of advice in these areas, advice that was relied upon by Trott and the other partners. (App. 78). Snow became interested in Burns upon learning that the burner would probably be granted patent protection. (App. 19). Snow eventually became a partner in Burns because he was convinced that there was a considerable market for such a product and that Burns would therefore be a profitable enterprise. (App. 19).

During the year 1966, Burns Investment Co. reported no sales of the incinerator or any other product. The burner was still in the process of being perfected and, in the opinion of the partners, had not yet reached the stage where it could be successfully marketed. Throughout this period Trott, the inventor and general partner, was devoting approximately one-third of his time to the incinerator project. (App. 50). Trott also expected the burner to become profitable in the "near future." (App. 75).

Burns filed a partnership return of income, Form 1065 (App. 124), for the taxable year 1966, showing a loss of $36,780.44, of which Snow's share was $9,195.11. The entire amount of this loss was attributable to the research and development expenditures. Both Echo and Courier filed partnership returns for the taxable years 1965 and 1966 (App. 138, 143, 152, 157), and they also claimed research and development expenses. However, the ex-

penses claimed by these partnerships were not disturbed by the Commissioner. Presumably this discrepancy in treatment was motivated by the fact that both Echo and Courier had products which were in a more advanced stage of development and which were then held available for sale or licensing.

In the succeeding years, the development of the Burns incinerator continued. Application for a patent was filed on June 10, 1968. A patent was issued on March 3, 1970, to Trott, the general partner. (App. 165). A number of foreign patents were also applied for and granted. Prior to 1970 Burns was incorporated under the name of Burns Investment Corporation to produce and market the incinerator under the trade name "Trash-Away." Snow has continued to participate in the venture and today serves as the corporation's Chairman of the Board. The "Trash-Away" is currently being produced, marketed and sold by Burns Investment Company. (App. 169).

SUMMARY OF ARGUMENT

The legislative history of Section 174 provides clear evidence that this section was enacted in order to encourage research and development on the part of "small or beginning" businesses. The Tax Court and the Sixth Circuit have frustrated that intent by insisting on existing sales of the product being developed. This criterion was articulated in the context of a different Code section and has no proper application to Section 174.

ARGUMENT

I

THE LEGISLATIVE HISTORY OF SECTION 174 CLEARLY DEMONSTRATES THAT BURNS INVESTMENT COMPANY IS ENTITLED TO CLAIM THE DEDUCTIONS FOR RESEARCH AND DEVELOPMENT WHICH ARE AT ISSUE IN THIS CASE.

The Sixth Circuit, in its opinion below (Cert. App. 35-44), denied Burns Investment Company the deductions which it had claimed under Section 174. That section allows a taxpayer to deduct research or experimental expenditures "which are paid or incurred by him during the taxable year in connection with his trade or business." The Court held that Burns had not yet become an established trade or business because "as of 1966 it (Burns) had no product to offer." (Cert. App. 38).

Petitioner Snow strongly contends that this interpretation of Section 174 stands in direct opposition to the purposes behind that section's original enactment.

Section 174 was intended to be a liberalizing provision to allow expenditures which otherwise would have to be capitalized to be deductible in the year incurred. The legislative history of Section 174 indicates a broad purpose to provide an economic incentive, especially for small and growing businesses, to engage in the search for new products and new inventions. The measure was initially introduced in Congress in 1951 "to clarify the existing confusion in respect of tax treatment of such expenditures, and to prevent tax discrimination between large businesses having continuous programs of research and *small or beginning enterprises.*" 97 Cong. Rec. 4326 A (1951) (Extension of Remarks of Rep. Camp.) (Emphasis supplied).

The remarks of Mr. Reid of New York, Chairman of the House Committee on Ways and Means addressed to the House during consideration of the H. R. 8300, the Bill embodying the Internal Revenue Code of 1954, give further indication of the purpose of Section 174 as finally enacted:

> "Research and Development Expenditures: Present law contains no statutory provisions dealing with the deduction of these expenses. The result has been confusion and uncertainty. Very often, under present law, small businesses which are developing new products and do not have established research departments are not allowed to deduct their expenses despite the fact that their large and well-established competitors can obtain the deduction. . . . This provision will greatly stimulate the search for new products and the new inventions upon which the future economic and military strength of a Nation depends. *It will be particularly valuable to small and growing businesses.*" 100 Cong. Rec. 3425 (1954) (Emphasis supplied).

Remarks by a spokesman for the United States Treasury clearly indicate that the Treasury Department's understanding of the intent of the proposed Section 174 was in complete harmony with the congressional concern shown above. During the course of the enactment of the 1954 Code, Under Secretary Marian B. Folsom made the following presentation to the Senate Finance Committee:

"SUMMARY OF 27 OF THE PRINCIPAL PROVISIONS OF H.R. 8300

19. RESEARCH AND DEVELOPMENT EXPENSE

Present	Proposed
No specific statutory treatment. Uncertanity whether particular expenditure is deductible or must be capitalized, particularly where there is no regular research budget. Unusual research expenses must be capitalized and written off in later years. Discourages research. Especially restrictive for small businesses.	Provide definite rules, giving option to taxpayers to capitalize or write off research and experimental activity. *Help small, pioneering businesses.*" Senate Finance Committee Hearing on H. R. 8300, 83rd Cong., 2nd Sess., p. 105, April 7, 1954. (Emphasis Supplied.)

Snow points out that the one common factor which stands out in all of the above remarks is the concern for businesses which were *not* well established. Section 174 was manifestly intended to help enterprises which were "small and pioneering," "small and growing," "small or beginning."

Given this background, a small, beginning business like Burns whose entire energies are devoted to a product development effort would therefore seem to be precisely the kind of company Congress sought to bring within the reach of Section 174. The decision by the Sixth Circuit in *Snow,* however, makes that section unavailable to this type of business, while preserving its availability to "large and well-established competitors."

The practical results of the Sixth Circuit's interpretation of Section 174 can be easily seen. An established

company with existing sales of a given product may refine and improve that product through research and experimentation and be permitted to deduct the costs of such research. An established company with existing sales of any given product may attempt to develop a completely new produce and will also be permitted to deduct the costs of such development, even though this new product is wholly unrelated to its current line of business. (*Best Universal Lock Co.,* 45 T.C. 1 (1965), Acq. 1966-2 C.B. 4). A new company with a new idea such as Burns, however, is unable to deduct these expenses. The Sixth Circuit's construction of Section 174 therefore obviously discriminates against new enterprises in favor of established companies. This result, inequitable on its face, appears wholly unjustified when one remembers that the section was originally introduced in order to *prevent* tax discrimination. (Remarks of Rep. Camp., *supra*).

Allowing this discrimination to continue would tend to foster and perpetuate monopoly by frustrating the development of inventions or improvements by newly organized competitors of established business. American economic history gives ample testimony of the importance of a business which begins with only a new and ingenious idea. Polaroid and Xerox are examples of enterprises organized to develop new ideas which were initially rejected by established companies.

Snow submits that in order to prevent discrimination and thereby fulfill the legislative intent of Section 174, a company such as Burns should be allowed to deduct the research and development expenses which it has incurred.

II

THE "HOLDING OUT" THEORY OF DEPUTY VS. DUPONT AND RICHMOND TELEVISION HAS NO LOGICAL RELATION TO SECTION 174. THUS THE EXTREMELY HEAVY EMPHASIS WHICH THE SIXTH CIRCUIT'S OPINION PLACED ON THIS THEORY WAS ENTIRELY MISPLACED.

The issue which this Court has agreed to decide is easily framed: Were these research and development expenditures paid or incurred by Burns Investment Company "in connection with its trade or business"? If so, they are deductible under Section 174. If not, they are not deductible under Section 174 or any other Code section.

The trade or business of Burns Investment Co. during the taxable year in issue was "the development of a special purpose incinerator for the consumer and industrial markets." (App. 81). That purpose was pursued by Burns on an extensive, varied, continuous, frequent and regular basis. (*Austin* v. *Comm.*, 298 F.2d 583 (2nd Cir., 1962); *Wright* v. *Comm.*, 274 F.2d 883 (6th Cir., 1960); *Miller* v. *Comm.*, 102 F.2d 476 (9th Cir., 1939); *Kazdin* v. *Comm.*, 28 T.C.M. 432 (1969).

From the inception of Burns, the incentive behind all of this activity was one of profit. Snow contributed capital and time to Burns because he believed the incinerator would be a profitable venture. (App. 19). Trott, the general partner, created three separate partnerships (Echo, Courier and Burns) in order to permit the various partners to participate only in the development of a product (s) which they felt would return a profit. The fact that Burns was not profitable during its first year, 1966, in no way

detracts from this profit motive. In a recent Tax Court case, the court noted that:

> ". . . the lack of economic return to the petitioner does not alone rule out the intention and expectation of making a profit. Such experimental activity often shows little, if any, return during developmental stages. It was to encourage this kind of activity that Congress authorized the current deduction of research and experimental expenditures." *Eugene J. Magee* v. *Commissioner,* 32 T.C.M. 1973-271.

Despite this profit-oriented activity, the Sixth Circuit held that the expenditures were not made in connection with the trade or business of Burns. A thorough reading of the decision shows that the principal factor on which this conclusion was based was that "Burns Investment Company in 1966 was not holding itself out to others as being engaged in the selling of goods and services." (Cert. App. 38).

Snow readily concedes that Burns was indeed not "holding itself out" to others as being engaged in the selling of goods and services in 1966. Burns was, however, holding itself out as being engaged in the business of developing a special purpose incinerator for the industrial and consumer markets. The incinerator was simply not yet ready to be economically sold in 1966. Snow insists, however, that the "holding out" test as used by the Sixth Circuit has absolutely no relevance in a Section 174 case.

This test was first articulated by Justice Frankfurter concurring in the case of *Deputy* v. *Dupont,* 308 U.S. 488, 499 (1940). Snow points out that *Deputy* v. *Dupont* concerned the disallowance of "ordinary and necessary" business expenses which had been claimed under Section 23 (a) of the Internal Revenue Code of 1928 (now Sec-

tion 162).[3] In fact, the full text of Justice Frankfurter's statement, which was only partially quoted by the Sixth Circuit, is as follows:

> "Carrying on any trade or business, *within the contemplation of 23 (a)*, involves holding one's self out to others as engaged in the selling of goods or services." *Dupont* at 499. (Emphasis supplied.)

The *Snow* case concerns deductions claimed under Section 174, and yet the Sixth Circuit's decision rests almost exclusively on a test which was expressly limited to the context of a different Code section by that test's original proponent.

Presumably the Sixth Circuit felt itself justified in transplanting the "holding out" test from Section 162 onto Section 174 because the two provisions have in common the use of the phrase "trade or business". Variations of the term "trade or business", including "active conduct of a trade or business," are used in at least sixty different sections of the Internal Revenue Code of 1954.[4] This no doubt explains why a satisfactory all-inclusive definition of that term has never been formulated.

> "There is no ultimate definition because the deductibility is dependent upon the examination of all the facts and activities of the taxpayer in each case." *Mertens, Law of Federal Income Taxation,* Vol. 4A, Chap. 25, Page 33.

Whenever this Court has had the occasion to interpret the term "trade or business," that interpretation has been

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[3] Section 162 reads in pertinent part:

"(a) In General — there shall be allowed as a deduction all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, ..."

[4] Saunders, *Trade or Business, Its Meaning Under the Internal Revenue Code,* So. Cal. 12th Inst. on Fed. Tax. 693 (1960).

limited to the context of the particular section under which the case arose. *Deputy* v. *Dupont,* 308 U. S. 488, 499 (1940); *Higgins* v. *Commissioner,* 312 U. S. 212 (1941); *Whipple* v. *Commissioner,* 373 U. S. 193, 203 (1963).

It thus seems improbable that the phrase "trade or business" has the same meaning in all of these sixty-odd Code sections. Even if a uniform definition of this term were able to be formulated, however, the sections involved herein (162 and 174) are marked by basic differences in prefatory language and intent. These differences are far more crucial to a proper understanding of the sections than is their common use of the term "trade or business."

Section 162 allows deductions for "ordinary and necessary" expenses incurred "in carrying on" any trade or business. Section 174, on the other hand, seeks to encourage experimentation by allowing deductions for "research and development" expenses incurred "in connection with" a trade or business.

The different language used in these two statutes argues strongly against transposing the "holding out" test from one to the other. "Holding one's self out" may well be a proper criterion to test whether or not a taxpayer is "carrying on" a business, since the phrase "carrying on" is normally addressed only to an activity which has already become well-established.[5]

Despite the fact that the phrase "carrying on a trade or business" had been in statutory existence since 1928, Congress chose to use another phrase — "in connection with a trade or business" — for purposes of Section 174. Snow believes this choice is solid evidence that the benefits of Section 174 were never intended to be limited to solidly

[5] Webster's Third New International Dictionary (1967 Ed.) contains the following definition: "Carry on: . . . . (2) to *continue* one's course or activity." (Emphasis supplied.)

established or "going" businesses. The omission of the phrase "carrying on" is therefore in complete accord with the avowed Congressional intent discussed earlier, *i.e.*, to encourage small enterprises which have not yet reached the well-established stage. In addition, it is certainly reasonable to assume that the statutory phrase "research and development" presupposes a product which is not yet in a marketable condition, yet the "holding out" or "going business" test demands existing sales of the product in order to qualify these deductions.

A further indication that the two sections are not to be construed as one is given by the fact that Section 174 itself contains absolutely no reference to Section 162. In contrast, there are other Code sections which do contain such a reference. See, for example, Section 1402 (c) and Regulation 1.512 (a) - 1 (b).

Unlike the Sixth Circuit, the Fourth Circuit Court of Appeals has apparently grasped the fundamental differences between Section 162 and Section 174.

In the case of *Cleveland* v. *Commissioner,* 297 F.2d 169 (4th Cir., 1961), an attorney (Cleveland) who was interested in experiments conducted by one of his clients (Kerla), began to lend Kerla financial assistance. Kerla was involved in trying to develop a new kind of liquid binder. Shortly after the enactment of Section 174, a formal trust agreement was entered into whereby Cleveland purchased a participating one-half interest in the invention for the past loans. In 1955 and 1956, Cleveland claimed deductions under Section 174 for funds attributable to research and development which were advanced subsequent to the agreement. *Cleveland's* facts do not indicate that the binder was ever actually marketed or that any patent was ever applied for. The Commissioner

and the Tax Court held that these advances were not deductible. The Fourth Circuit reversed, holding:

> "In this instance the decision of the parties to the agreement to define their relationship so as to take advantage of the benefits of the statute was in harmony with the purpose of the enactment to encourage expenditures for research and experimentation." *Cleveland* at 171.

Despite the great similarity in the facts of *Snow* and *Cleveland,* the Sixth Circuit chose not to follow *Cleveland,* stating that "we prefer the logic of the later Fourth Circuit holding in *Richmond Television Corporation* v. *United States,* 345 F.2d 901, (4th Cir., 1965) to the Fourth Circuit's earlier holding in *Cleveland.*" (Cert. App. 40).

This statement would seem to imply that *Richmond* had qualified or overruled the *Cleveland* decision. A reading of *Richmond,* however, reveals that the case never so much as mentions *Cleveland.* This omission seems quite proper since the issue in *Richmond* was whether a television station's "start-up" or "preparatory" expenses were incurred in carrying on a trade or business and therefore deductible under Section 162. *Cleveland,* on the other hand, concerned the deductibility of research and experimental expense under Section 174.

Snow also concerns Section 174 and not Section 162. The characteristics which distinguish these two sections have been discussed above. The Sixth Circuit therefore erred in applying *Richmond* to *Snow.*

The Sixth Circuit's decision below rested almost exclusively upon the fact that Burns Investment Co. did not pass the "holding out" test during 1966. As discussed above, Snow believes that this test has no proper application to a Section 174 case. If Snow is correct in this belief, then Burns Investment Company did make these ex-

penditures "in connection with its trade or business" and is therefore entitled to deduct these expenses under the provisions of Section 174.

III

THE FACT THAT SNOW WAS A "HIGH BRACKET TAXPAYER" HAS ABSOLUTELY NO RELEVANCE TO THE ISSUE BEFORE THIS COURT.

In its opinion below, the Sixth Circuit made the following observation:

> "One other fact should be added. Snow had an income in 1966 at his principal occupation as an Executive Vice President of Procter & Gamble in excess of $200,000. As a consequence, if Section 174 applied, his investment in Burns was made as a high bracket taxpayer. Thus, as is so frequently true, two laudable public purposes are in direct conflict: (1) the Congressional purpose of stimulating research and development, including research and development on the part of inventors and small businessmen, and (2) the desirability of strict interpretation of tax laws, so as to prevent unintended tax shelters." (Cert. App. 37-8).

Snow wishes only to make two brief comments about the above remarks:

(1) Snow submits that the issue before this Court concerns the ability of a beginning business to claim deductions under Section 174. The amount of Snow's income from Procter and Gamble has absolutely no relation to whether Burns incurred these expenses "in connection with its trade or business."

(2) It is completely incorrect to refer to a Section 174 expenditure as an "unintended tax shelter." There is no sheltering of income involved here. If Burns fails to realize a profit, the partners in Burns sustain a genuine economic loss.

In contrast to an unintended tax shelter, in the instant case we are dealing with a tax *incentive*. "Tax incentives are provisions that are carefully considered and intentionally enacted into law by the Congress of the United States."[6] This particular incentive was enacted in order to encourage research and development. Snow's reliance on Section 174 was therefore precisely the result which Congress intended.

The record clearly shows that Snow, who has already paid over $80,000 in 1966 income taxes, became a partner in Burns not to "shelter" taxes but rather with the expectation of realizing a profit on which he would pay additional taxes.

IV

SNOW IS REQUIRED BY LAW TO DEDUCT HIS DISTRIBUTIVE SHARE OF ANY TAXABLE INCOME OR LOSS GENERATED BY BURNS.

In the foregoing argument (I-III), Snow has shown that the entity known as Burns Investment Company was entitled to deduct research and experimental expenses which were incurred in connection with its trade or business during the taxable year 1966. Burns made a proper election to claim these deductions in its partnership return (Form

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[6] Remarks by the Honorable Samuel R. Pierce, Jr., General Counsel, U. S. Treasury, Thirteenth Southwestern Ohio Tax Institute, December 1, 1972.

1065) for that year. (App. 125). Because of these expenses, Burns sustained a net operating loss of $36,780.

Section 702 (a) (9) of the Internal Revenue Code of 1954[7] requires that Snow, as a partner in Burns, take into his individual account his distributive share of the loss sustained by Burns. The fact that Snow was a limited partner in Burns does not alter the requirements of Section 702. "The Code and Regulations make no distinction here significant between ordinary and limited partnerships." *Butler* v. *Commissioner,* 36 T.C. 1097 (1961), Acq. 1962-1 C.B. 3; *Estate of Ellsasser* v. *Commissioner,* 61 T.C. No. 26 (1973).

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the courts below should be reversed.

Respectfully submitted,

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February 21, 1974

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[7] Section 702 — Income and Credits of a Partner — (a) General Rule — In determining his income tax, each partner shall take into account separately his distributive share of the partnership's . . . . (9) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

IN THE

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vs.

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Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

BRIEF FOR AMICI CURIAE.

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BRIEF FOR AMICI CURIAE.

Statement of the Case.

Section 174[1] provides:

(a) Treatment as Expenses.—

> (1) In General.—A Taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

The court below held that expenditures under Section 174 must be related (i) to the development or im-

[1]Int. Rev. Code of 1954. All references to the Internal Revenue Code of 1954 will be made merely by citing the Code Sections. References to other legislation will be specifically noted.

provement of existing products and services, or (ii) to new products and services in connection with a going trade or business. Applying the language of Justice Frankfurter's concurring opinion in *Deputy v. Du Pont*, 308 U.S. 488, 499 (1940), the Sixth Circuit held that for the "new products" aspect of the test, a going trade or business "involves holding oneself out to others as engaged in the selling of goods or services". Since Burns Investment Company, the partnership in issue, did not have existing products or services (it was developing its initial product) and did not engage in selling or licensing activity during the year in issue, the expenditures incurred, admittedly for research and development activities, were not deductible under Section 174.

Question Presented.

Whether a business is entitled to deduct research and experimental expenses incurred in the development of its initial product.

Statement of Interest of Amici Curiae.

This brief is filed by the undersigned attorneys as friends of the Court with the consent of the petitioners and respondent. The question presented in this case is substantially the same for the many newly-organized enterprises engaged in research and development activity prior to the marketing of their initial product. The undersigned attorneys represent various taxpayers and business enterprises engaged in research and development activity who will be affected by the resolution of the issue involved in this case. The undersigned attorneys are also concerned, in their capacity as members of the Bar generally, with the implications of the position advanced by the Commissioner insofar as such

position would tend to foster and perpetuate monopoly and frustrate the development of new inventions and products.

Summary of Argument.

The Sixth Circuit employed an erroneous standard under Section 174 in determining that Burns Investment Company's research and experimentation expenses were nondeductible pre-operating expenses and therefore not incurred in connection with an existing trade or business. The term "trade or business" as used in the Internal Revenue Code must be read in light of the purposes of the particular section which is being construed.

The legislative history of Section 174 indicates that the deductibility of research and development expenditures was intended to benefit small and beginning businesses developing new products and to stimulate the search for new products and inventions. To give effect to the intent of Congress, the term "trade or business" for purposes of Section 174 should be construed to embrace all bona fide business entities organized for a profit motive and engaged systematically and in a sustained manner in research and experimentation directed towards the development of a particular product that is to be marketed.

The Sixth Circuit decision, by requiring a taxpayer who desires to avail himself of the benefits of Section 174, to have engaged in marketing activities in the year in issue, or to have an existing product or product line, improperly imposes restrictions on the normal decisions of small businesses, discriminates in favor of large, established companies, and produces a chilling effect on the development of new ideas.

ARGUMENT.

I.

The Sixth Circuit Employed an Erroneous Standard in Requiring That the Partnership Be Engaged in the Selling of Goods or Services in Order to Be Entitled to the Benefits of Section 174.

The concept of engaging in a trade or business is one that appears frequently in the Internal Revenue Code. See *e.g.* Sections 62, 162, 163, 165, 166(d), 174, 1231. Not only is the determination of whether one is engaged in a trade or business a question of fact, *Higgins v. Commissioner,* 312 U.S. 212 (1941), but the criteria to be applied to make that judgment will vary depending on the purpose of the particular provision under review. A phrase used many places in the Internal Revenue Code, like "trade or business", is not "a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." Mr. Justice Holmes, in *Towne v. Eisner,* 245 U.S. 418, 425 (1918). Thus, for example, because of the special legislative purposes of Section 166(d)(2) (business v. nonbusiness bad debt deduction) the inquiry is to distinguish the broad range of income or profit-producing activities from those which satisfy the narrower category of trade or business. See *Whipple v. Commissioner,* 373 U.S. 193 (1963).

In any case, there is no talismanic formula for what is or is not a trade or business. Actively engaging in marketing activity is only a working tool aiding in the analysis. The purposes and intent behind Section 174 must also be fed into the decisional process to derive

a trade or business test consistent with the objectives of the statute.

Section 174 was intended to be a liberalizing provision to allow expenditures, which otherwise would have to be capitalized, to be deductible in the year incurred. The legislative history of Section 174 indicates a broad purpose to provide an economic incentive, especially for small and beginning businesses, to engage in the search for new products and new inventions. The measure was intially introduced in Congress in 1951 "to clarify the existing confusion in respect of tax treatment of such expenditures, and to prevent tax discrimination between large businesses having continuous programs of research and small or beginning enterprises". 97 Cong. Rec. 4326A (1951) (Extension of Remarks of Representative Camp). The remarks of Mr. Reed of New York, Chairman of the House Committee on Ways and Means addressed to the House during consideration of H.R. 8300, the bill embodying the Internal Revenue Code of 1954, indicates the broad purpose of Section 174 as finally enacted:

> "Research and Development expenditures: Present law contains no statutory provisions dealing with the deduction of these expenses. The result has been confusion and uncertainty. Very often, under present law small businesses which are developing new products and do not have established research departments are not allowed to deduct their expenses despite the fact that the large and well-established competitors can obtain the deduction. . . . This provision will greatly stimulate the search for new products and new inventions upon which the future economic and military strength of Nation depends. It will be particularly valuable to small and growing businesses." 100 Cong. Rec. 3425 (1954).

A small business whose entire energies are devoted to a product development effort would seem to be precisely the kind of company Congress sought to bring within the search of Section 174. The Sixth Circuit's decision is not sensitive to the needs of such a small business because it requires a company to divert its resources in the early stages from research activity to sales and marketing efforts. This kind of requirement interferes with normal business decision-making and subverts Congressional intent "to stimulate the search for new products and new inventions."

The lower courts' reliance on Justice Frankfurter's concurring opinion in *Deputy v. Du Pont,* 308 U.S. 488, 499 (1940), is totally misplaced. The issue in that case was whether the taxpayer's activities to enhance his investment in a corporation constituted carrying on a trade or business under the predecessor section of Section 162. The particular formulation of a trade or business definition in that context cannot be transplanted indiscriminately into Section 174.

Similarly, *Richmond Television Corporation v. Commissioner,* 345 F.2d 901 (4th Cir. 1965), another case under Section 162, is not in point. There, the court held that amounts expended to train prospective employees in the techniques of television broadcasting which were paid prior to obtaining a license to broadcast from the Federal Communications Commission were not deductible. As a matter of law, the taxpayer could not have been in the broadcasting business when the pre-license expenses were incurred. In addition, certain of such amounts, which had been paid to another company, represented "the acquisition of a capital asset whose value to the taxpayer would continue for many years. . . ." 345 F.2d 901, 907. It has long been recognized, as

a general matter, that costs incurred in the acquisition of a capital asset are not deductible but are to be treated as capital expenditures. See *Woodward v. Commissioner*, 397 U.S. 572 (1970). The *Richmond Television* case is consistent with this rule and with those cases which hold that costs to secure a license or franchise, *e.g.*, *KWTX Broadcasting Co. v. Commissioner*, 272 F.2d 406 (5th Cir. 1959) are not deductible but are to be charged to the capital account.

Under Section 174, however, entirely different considerations prevail. The section extends to the taxpayer the privilege of deducting expenditures which under the general rule must be capitalized.

> "A taxpayer *may* treat research and development expenditures . . . as *expenses which are not chargeable to the capital account. The expenditures so treated shall be allowed as a deduction.*" Section 174 (emphasis supplied).

Congress recognized that research and development expenditures by their nature may be capital items incurred prior to a product's commercial acceptance. To preclude the capitalizing of such expenditures and to permit their deduction when incurred, the provisions of Section 174 were fashioned. The effect of the Commissioner's "trade or business" argument is to carry us back to the state of the law prior to the enactment of Section 174.

A small business whose energies are devoted to a product development effort must begin business somewhere. If the activities of the partnership here in issue are of a nature to demonstrate commitment to a particular course of business with a profit motive and if research

and experimentation is being conducted as part of a bona fide effort to develop a particular product for use in that business, for purposes of Section 174 it should be of no concern that the partnership's efforts have not yet begun to pay off, that it has not yet found a suitable medium for exploiting the product, or that it elects to defer active sales efforts until development has been completed.

II.

The Purpose of Section 174 Would Be Served by Construing the Trade or Business Requirement to Preclude the Deductibility of Personal or Hobby Loss Items in Accordance With the Criteria Contained in Section 183.

Section 183 and the regulations thereunder indicate the type of analysis which might be invoked in the determination of whether a trade or business exists for purposes of Section 174. Section 183 provides in substance that an individual or an electing small business corporation engaged in an activity without a profit motive is not allowed deductions attributable to such activity. A presumption is provided under that section that an activity is engaged in for profit if certain requirements are met, and permits the taxpayer to postpone determination of whether such presumption applies until he has engaged in the activity for at least five taxable years. Regulation Section 1.183-2 states that the determination as to whether an activity is engaged in for profit is to be made by reference to objective standards, taking into account all the facts and circumstances of each case:

> ". . . Although a reasonable expectation of profit is not required, the facts and circumstances must

> indicate that the taxpayer entered into the activity or continued the activity, with the objective of making a profit. In determining whether such an objective exists, it may be sufficient that there is a small chance of making a large profit. Thus it may be found that an investor in a wildcat oil well who incurs very substantial expenditures is in the venture for profit even though the expectation of a profit might be considered unreasonable. In determining whether an activity is engaged in for profit, greater weight is given to objective facts than to the taxpayer's mere statement of his intent." Reg. Section 1.183-2(a).

The regulation proceeds to set forth the relevant factors to be considered in determining whether an activity is engaged in for profit. No one factor is held to be determinative. Among the factors which are said normally to be taken into account are the following:

> (1) The manner in which the taxpayer carries on the activity; (2) the expertise of the taxpayer or his advisors; (3) the time and effort expended by the taxpayer in carrying on the activity; (4) the expectation that assets used in activity may appreciate in value; (5) the success of the taxpayer in carrying on other similar or dissimilar activities; (6) the taxpayer's history of income or losses with respect to the activity; (7) the amount of the occasional profits, if any, which are earned; (8) the financial status of the taxpayer; (9) the elements of personal pleasure or recreation. Reg. Section 1.183-2(b).

Amici suggest that these are the factors which should be considered in determining whether a business entity's

research and experimental expenses have been incurred in connection with its trade or business for purposes of Section 174. If the entity's efforts to develop a particular product are part of a sustained effort, carried on in a business-like manner, such activities demonstrate an intent to derive a business profit and the purpose of the Section 174 trade or business requirement should be satisfied.

The court below held that it was not enough for Burns Investment Company to be engaged "in the business of doing research and experimentation, or of being an inventor", for profit. Such an interpretation of Section 174 is unnecessarily restrictive and in fact works to defeat the underlying purposes of this liberalizing provision.

The construction of Section 174 to restrict its availability to businesses engaged in the selling of goods and services has no support in the statute or legislative intent. Such a test fosters an unfortunate intrusion by the courts into the area of business decision-making as to the means and the timing of marketing operations for a business entity. Moreover, since research and development expenditures by their nature are most often incurred before a product is ready for marketing, if such expenditures cannot be deducted when incurred because of the Sixth Circuit's sales activity test, established companies (having sales activity) are favored over those entering the field with new ideas.

Good business judgment might dictate that a small company's resources be more profitably spent in product research and development during its early stages rather than being diverted into sales efforts to comply with the wooden test of the courts below. Although a new business presumably could find customers interested in acquiring a product under development on an if, as, and when developed basis, the business would be in a position of either accepting such offers to purchase the product (undoubtedly at a substantial discount) or taking the risk of running afoul of the test. As a practical result, the Sixth Circuit's test would tend to force the new business to disclose its plan to produce a new product at a time when disclosure might mean that larger firms with greater resources would appropriate the idea and be first to reach the market with the product.

It is submitted that none of the above consequences were intended by Congress in enacting Section 174 with a trade or business requirement. The liberalizing purposes of Section 174 would be served by construing the trade or business requirement to preclude the deductibility of personal or hobby items and to allow deductibility where the activities of the taxpayer are of the character as would meet the tests for deductibility under Section 183.

III.

The Sixth Circuit Was Also in Error in Denying the Benefits of Section 174 to the Partnership on the Ground That It Had No Product to Offer.

In addition to relying on the lack of marketing activity during the year in issue, the Sixth Circuit held that Burns Investment Company's research and development expenses were nondeductible because the expenditures were made when it had no product to offer. The Sixth Circuit would apparently allow the Section 174 deduction to an enterprise that has a product wholly unrelated to the new product being developed while denying the deduction to a taxpayer in business solely to market that single product.

This test produces some absurd results. For example, a company engaged in manufacturing hairpins would be able to deduct expenses incurred in developing a smogfree automobile engine while another enterprise engaged in developing this new type of engine would be denied Section 174 treatment if the engine is its initial product.

Consider also a company formed to develop a method or process for utilizing solar energy as a power source in order to eliminate dependence on oil. Such a company might build or lease a facility, purchase equipment and employ hundreds of people in research and development activities over several years before achieving the technological progress which would enable it to market inexpensive solar energy. It is inconceivable that Congress intended to withhold the benefits of Section 174 to such a company while allowing an oil company to receive the Section 174 benefits solely for the reason that the oil company has other products. The substantial advantage possessed by an established company in any field would be enhanced by preserving

for it the benefits of Section 174 while denying such benefits to a new company developing its initial product.

Section 174 should not be construed to foster or perpetuate monopoly or to preserve favored treatment for established businesses. We respectfully urge the Court to take this opportunity to formulate a trade or business test under 174 which will be sensitive to the needs of small and beginning enterprises and which will not frustrate the flow of capital to the search for new inventions and products. For these reasons it is respectfully submitted that the judgment of the Court below be reversed and the case remanded for the determination of whether Burns Investment Company meets the trade or business test as articulated by this Court.

Conclusion.

If Section 174 is to encourage research and development activities, its benefits should be available to newly-organized businesses engaged in developing new products as well as to established companies. The trade or business test under Section 174 should not be applied to discriminate against new businesses which may not yet be ready to market their initial product. The trade or business test should be applied to preclude the deduction of essentially personal or hobby expenditures under Section 183-type criteria.

Respectfully submitted,

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February 20, 1974.

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No. 73-641

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OCTOBER TERM, 1973

EDWIN A. SNOW AND HELEN B. SNOW, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The findings of fact and opinion of the Tax Court (Pet. App. 13-34) are reported at 58 T.C. 585. The opinion of the court of appeals (Pet. App. 35-44) is reported at 482 F.2d 1029.

JURISDICTION

The judgment of the court of appeals was entered on July 17, 1973 (I-A. 1).[1] The petition for a writ of certiorari was filed on October 12, 1973, and was granted on January 7, 1974 (I-A. 104). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether both courts below correctly held that petitioner could not deduct his pro rata share of expenditures incurred by a partnership for the development of an invention as research or experimental expenditures under Section 174 of the Internal Revenue Code of 1954, because they were not incurred in connection with a trade or business.

STATUTE INVOLVED

Section 174 of the Internal Revenue Code of 1954 is set forth in Appendix A, *infra*, pp. 40-42.

STATEMENT

Petitioner[2] is an officer of Procter & Gamble Company, where he has been employed since 1933. His work for that corporation was initially in ad-

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[1] "A." references are to the record appendix which is separately bound in two volumes. References "I" and "II" are to the volume of the record appendix.

[2] References to petitioner are to Edwin A. Snow; Helen B. Snow is a party solely by reason of having filed a joint return with her husband for 1966, the year at issue.

vertising and marketing. Subsequently, petitioner's employment duties were in management, and in 1966, he became executive vice-president of Procter & Gamble and a member of its board of directors. Petitioner never had any training in engineering nor had he ever applied for a patent (Pet. App. 14).

Since 1942, petitioner has known David H. Trott, a fellow Procter & Gamble employee, who also worked in advertising, marketing, and general management activities. Like petitioner, Trott had no engineering training or background. In 1963, Trott retired from Procter & Gamble after 22½ years of service. Upon his retirement, Trott purchased a 25 percent interest in Crossbow, Inc. ("Crossbow"), a corporation which performed machine and fabricating work. In 1965, Trott became sole owner of Crossbow (Pet. App. 14-15).

At the time Trott first acquired an interest in Crossbow, the primary activity of the corporation was the manufacture and sale of a novelty item under the trade name "Drinklight" and the performance of job shop work for customers in the fabricating business (I-A. 55). The staff of that corporation was also experimenting with a telephone answering service. Thereafter, Trott conceived the idea of a tape recording device and a leaf or trash burner, both of which the Crossbow employees began developing. Models of the leaf or trash burner were constructed for the purpose of experimentation and development (Pet. App. 15).

In December 1965, Trott's patent counsel advised him that the leaf burner might have certain patentable features but suggested that the preparation of any patent application be delayed until after the completion of a prototype model. Two prototype models were thereafter constructed and tests performed upon them. In February 1966, the patent counsel advised petitioner that the tests performed upon the two existing models and his examination of them demonstrated that neither model performed satisfactorily enough to be marketable. He stated that the device would have to be modified before it could achieve an adequate level of performance. As a result, the patent counsel concluded at that time that "the leaf burner invention has not yet been reduced to practice" (Pet. App. 18-20; I-A. 103).

In February or March 1966, petitioner orally agreed to join in a limited partnership venture to assist Trott in financing the development of the device. On July 8, 1966, an agreement to form a limited partnership known as Burns Investment Company was executed. Under the partnership agreement, petitioner contributed $10,000 for a four percent limited partnership interest, and two other investors contributed $20,000 and $10,000 for eight and four percent limited partnership interests, respectively. Trott received a 50 percent interest as the sole general partner and a 34 percent interest as a limited partner, in exchange for which he contributed "[a]ll right, title and interest to a product concept" of the proposed device (Pet. App. 20-21).

As the general partner, Trott had the sole right to manage and conduct the partnership business (Pet. App. 21). Unless authorized by Trott, no limited partner could transact partnership business or act as agent for the partnership. The general partner had complete control of the funds of the partnership and their disbursement (I-A. 85). The limited partners' liability for partnership debts could not exceed their capital contribution (Pet. App. 21-22; I-A. 85).

During 1966, the Burns Investment Company partnership expended $36,780.44 for engineering services performed primarily by Crossbow employees and for management services performed exclusively by Trott. There was no written contract between Crossbow and Burns Investment Company for these services (Pet. App. 22-23; I-A. 56-57).

The office of Burns Investment Company was designated to be at the premises of Crossbow. In 1966, the Burns partnership had no manufacturing plant of its own, and had no office or separate facility. At the Crossbow shop, the Burns partnership had no telephone and there was no sign on the building denoting its presence. Neither petitioner Trott nor anyone else made any marketing efforts on behalf of the Burns partnership in 1966 (Pet. App. 23; I-A. 61).

After the $40,000 cash contribution by the limited partners had been exhausted, Trott financed the project on his own and radically changed the mechanical approach of the device. On June 10, 1968, Trott filed an application for a patent which was issued to him on March 3, 1970. Prior to that time, a cor-

poration was organized under the name Burns Investment Corporation to produce and market the device (Pet. App. 23; I-A. 68).

Burns Investment Company was not the only limited partnership formed by Trott for the financing of a potential invention. In 1965, Trott had formed two different limited partnerships, Echo Development Company and Courier Enterprises, for the respective development of the telephone answering device and the tape repording device (Pet. App. 15-18). As in the case of Burns Investment Company, the site of both Echo and Courier was the premises occupied by Crossbow (Pet. App. 15, 21). In 1965, petitioner contributed $21,325 and $5,000 respectively to Echo and Courier in exchange for 10 percent limited partnership interests (Pet. App. 16; II-A. 141, 146, 150, 155).

During the years 1965 through 1967, neither Echo nor Courier earned any income from operations. For 1965, their first year of existence, Echo and Courier elected to deduct their expenditures for research and development as current expenses under Section 174 of the Code. As a result, Echo and Courier reported losses for 1965 of $79,167.60 and $19,677.11, respectively (II-A. 138, 152). Unlike Crossbow's relationship with the Burns partnership, which was not reduced to a written understanding, the amounts Echo and Courier paid to Crossbow were pursuant to written contracts (I-A. 57).

Petitioner's pro rata share of the Echo and Courier partnership losses was $7,916.76 and $1,967.71, re-

spectively (II-A. 141, 155). For 1966, Echo and Courier reported smaller losses of $5,628.94 and $15.44 respectively (II-A. 143, 157). Petitioner's pro rata shares of these losses was $562.89 and $1.54, respectively (II-A. 146, 159). For 1967, Echo and Courier reported no income and no expenses (II-A. 148, 161).

Burns Investment Company's income and expenditures followed much the same pattern as that of Echo and Courier except that the principal amount of its expenditures were incurred in 1966, one year later. For the period August 1, 1966 to December 31, 1966, Burns Investment Company reported no income and $36,780.44 of research and development expenditures. As a result of this expense, the partnership's opening capital of $40,000 was reduced to $3,219.56 as of December 31, 1966. The partnership return stated that the company "elects to expense in the current taxable year * * * research and development expenses pursuant to Section 174(a)" (Pet. App. 24; II-A. 124-125, 127-128). For the year 1967, Burns Investment Company reported no income and no expenses (Pet. App. 24; II-A. 129). Finally, for the year 1968, it reported no income, research and development expenses of $3,217.64, and a bank service expense of $1.92, thereby leaving no remaining assets (Pet. App. 24; II-A. 133-134).

During 1966, petitioner devoted a minimum of 50 hours per week to his duties as vice president of Procter & Gamble; three hours a week to a thoroughbred race horse operation which he owned; and one hour a week to a joint venture oil operation. He spent ap-

proximately one hour per week in meetings and conversations with respect to the project of each partnership—the telephone answering device, the tape recorder, and the trash or leaf burner. Some of the conversations took place by telephone, some at the premises of Crossbow, some at restaurants, and some at Trott's or petitioner's home. Petitioner witnessed tests of various models of the leaf burner and gave advice regarding marketing if it ever developed to the stage of being marketable (Pet. App. 26).

Petitioner deducted his pro rata share of Burns Investment Company's 1966 loss of $9,195.11 on his individual income tax return for 1966 [3] (II-A. 116). On audit, the Commissioner of Internal Revenue disallowed the deduction on the ground that the research the development expenditures were not "incurred by him during the taxable year in connection with his trade or business" as required by Section 174(a)(1) (Pet. App. 27). The Tax Court found that Burns Investment Company was not engaged in a trade or

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[3] In general, Section 704(a) of the Code permits a partner's distributive share of gains and losses to be determined by the partnership agreement. Although petitioner only had a 4 percent interest in profits, he deducted 25 percent of the partnership loss for 1966, pursuant to an amendment of the partnership agreement executed on April 3, 1967. The amendment provided that the limited partners were to share net partnership losses in proportion to their capital contributions (I-A. 87-89). Pursuant to Section 761(c) of the Code, the April 3, 1967 amendment to the partnership agreement was timely because it was made prior to April 15, 1967, the prescribed time for filing the 1966 partnership return. See Sections 6031 and 6072 of the Code.

business in 1966. It thereby upheld the Commissioner's determination that the expenses for research and experimentation upon the trash burning device paid by Burns Investment Company were not paid or incurred in connection with the trade or business of the partnership or of petitioner within the meaning of Section 174 (Pet. App. 26).

The court of appeals unanimously affirmed. It found that neither petitioner nor any other member of the Burns Investment Company held themselves out as engaging in the activity of selling the device in 1966. That court emphasized the fact that the partnership had nothing to sell during that year because the device did not even function properly at that time. As a result, it concluded that the partnership's activities did not meet the classic definition of a "trade or business" and that its expenditures incurred in 1966 could not be deductible under Section 174 (Pet. App. 35-44).

SUMMARY OF ARGUMENT

A

Section 174(a) of the Internal Revenue Code of 1954 allows a taxpayer to "treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account." Section 174(b) provides an option to amortize such expenditures over a period of not less than 60 months. Prior to the enactment of this statute in 1954, the courts had uni-

formly held that research or experimental expenditures were nondeductible capital outlays because the benefits derived from them extended beyond the taxable year. As a result, they could not be deducted under the longstanding provision, now contained in Section 162(a), allowing deductions for "all the ordinary and necessary expenses paid * * * in carrying on any trade or business."

The elimination in Section 174 of the requirement that research or experimental expenditures be "ordinary" insured their deductibility even if they were unusual or otherwise were deemed to be a capital expenditure. However, the statute retained the requirement, present in the business expense provision as well, that such expenditures be incurred in connection with a "trade or business." By incorporating in Section 174 a term which this Court has described as "not new to the tax laws," Congress made clear that not all research or experimental expenditures would be deductible, regardless of the context in which they were incurred.

B

The issue in this case is whether petitioner's partnership incurred research or experimental expenditures in 1966 "in connection with [its] trade or business" so as to be deductible under Section 174. Both courts below denied the claimed Section 174 deduction on the ground that no trade or business existed during that year. Their conclusion is in conformity with the classic definition of "trade or business," which is restricted to "holding one's self out to others as en-

gaged in the selling of goods or services." *Deputy* v. *duPont*, 308 U.S. 488, 499. Since that definition was formulated more than three decades ago, it has been applied by the courts in a wide variety of factual and statutory contexts. A necessary corollary of this definition of "trade or business" is that expenditures incurred in preparation for the possibility of entering a new trade or business are not deductible as "trade or business" expenses.

Although petitioner acknowledges that his partnership was not engaged in a "trade or business" as that term has been defined by the courts, he argues that all Section 174 requires is the existence of a profit motive. But if Congress had intended to allow the deduction of all research or experimental expenditures incurred in the hopes of realizing a profit, it surely would have employed the broader test in Section 212 permitting deduction of expenses incurred for the "production of income" rather than the narrower "trade or business" formulation. Moreover, this Court and others have recognized that the term "trade or business" has a uniform meaning throughout the Code. Petitioner's attempt to insulate the phrase "trade or business" in Section 174 from its use in other sections of the Code ignores both the decisions of this Court and the legislative history of that provision, which links it with the general "trade or business" expense deduction provision of Section 162(a).

C

Application of the foregoing principles to the facts of this case shows that the expenditures incurred by

petitioner's partnership in 1966 to develop a trash burner invention were not "incurred in connection with a trade or business" within the meaning of Section 174. During that year, neither petitioner nor any other member of the partnership held themselves out as engaging in the activity of selling anything. Indeed, the partnership had nothing whatever to sell because the invention was still in the development stage and did not even function properly. Under these circumstances, the activities of petitioner and his partnership did not satisfy the elements of the well-established "trade or business" definition. They were at best an investigation into the future marketing of a trash burning device. Since the expenditures were not incurred in connection with an existing trade or business, they were therefore not deductible under Section 174.

With one possible exception, the decision below is consistent with all the reported cases under Section 174. The courts have construed the "trade or business" nexus of Section 174 to require a showing of an existing trade or business, which is completely lacking in this case. To the extent that *Cleveland* v. *Commissioner*, 297 F.2d 169 (C.A. 4), is regarded as holding that the simple execution of a partnership agreement is sufficient to establish a "trade or business" for purposes of Section 174, we believe that its conclusion was properly rejected as erroneous by the court of appeals.

ARGUMENT

BOTH COURTS BELOW CORRECTLY HELD THAT PETITIONER COULD NOT DEDUCT HIS PRO RATA SHARE OF EXPENDITURES INCURRED BY A PARTNERSHIP FOR THE DEVELOPMENT OF AN INVENTION AS RESEARCH AND EXPERIMENTAL EXPENDITURES UNDER SECTION 174 OF THE CODE, BECAUSE THEY WERE NOT INCURRED IN CONNECTION WITH A TRADE OR BUSINESS

A. Introduction: The Background and Scope of Section 174

1. Prior to the enactment in 1954 of Section 174 of the Internal Revenue Code, the tax treatment of research or experimental expenditures incurred by a business was uncertain. Under the longstanding general business expense provision now in Section 162(a) of the Code, a deduction is allowed for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *."[4] While research or experimental expenditures might qualify as "necessary" in that they are "appropriate and helpful" for "the

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[4] The Revenue Act of 1913 allowed a deduction for the "ordinary and necessary" business expenses of a corporation and the "necessary" business expenses of an individual. Revenue Act of 1913, c. 16, 38 Stat. 114, 166, Secs. II (G) (b) (corporation) and Sec. II (B) (individuals). Five years later, the word "ordinary" was added to the section covering individuals' deductions. Revenue Act of 1918, c. 18, 40 Stat. 1057, Section 214(a) (1). It appears that this change was designed merely to make the language of the two sections consistent. H. Rep. No. 767, 65th Cong., 2d Sess, p. 10; 4 Mertens, *Law of Federal Income Taxation*, § 25.01, n. 2 (1960 Rev.).

development of the [taxpayer's] business," *Welch* v. *Helvering*, 290 U.S. 111, 113, it was less clear that they would be deemed "ordinary."

Decisions of this Court have indicated that the statutory term "ordinary" serves two distinct purposes. In construing that term, the Court first observed that the word has the connotation of "normal, usual, or customary." *Deputy* v. *duPont*, 308 U.S. 488, 495. While noting that "an expense may be ordinary though it happen but once in the taxpayer's lifetime," the Court has defined "ordinary" to require that "the transaction which gives rise to [the expenditure] * * * be of common or frequent occurrence in the type of business involved." (*Ibid.*) See also *Welch* v. *Helvering*, *supra*, at 114. More recently, in *Commissioner* v. *Tellier*, 383 U.S. 687, the Court stated (383 U.S. at 689-690):

> The principal function of the term "ordinary" in § 162(a) is to clarify the distinction, often difficult, between those expenses that are currently deductible and those that are in the nature of capital expenditures, which, if deductible at all, must be amortized over the useful life of the asset.

See also *Commissioner* v. *Lincoln Savings & Loan Assn.*, 403 U.S. 345, 353.

The essence of an "ordinary" business expense as that term is used in *Commissioner* v. *Tellier*, *supra*, is that the benefit from the expense is derived and exhausted within the taxable year. In contrast, Section 263(a)(1) prohibits a deduction for "[a]ny amount

paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate."

While the principle embodied in this statutory provision is most frequently applied to costs incurred in the acquisition of a capital asset, *Woodward* v. *Commissioner*, 397 U.S. 572, 575, a cost that "results in the creation of an asset having a useful life which extends substantially beyond the close of the taxable year * * *" is also a nondeductible capital outlay. Treasury Regulations, Section 1.461-1(a)(1) and (2). See also *United States* v. *Akin*, 248 F.2d 742, 744 (C.A. 10); *Wells-Lee* v. *Commissioner*, 360 F.2d 665 (C.A. 8); *Teitelbaum* v. *Commissioner*, 294 F.2d 541 (C.A. 7), certiorari denied, 368 U.S. 987; *Darlington-Hartsville Coca-Cola B. Co.* v. *United States*, 273 F. Supp. 229, 231 (D.S.C.), affirmed, 393 F.2d 494, 496 (C.A. 4), certiorari denied, 393 U.S. 962.

The nondeductibility of so-called capital expenditures has been well established in the federal tax system from its very beginnings.[5] As a result, research

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[5] The language of Section 263 of the 1954 Code was first used in Section II(B) of the Revenue Act of 1913, c. 16, 38 Stat. 114, 167, and has been included in each successive income tax statute. See Sec. 5(a)(8), Revenue Act of 1916, c. 463, 39 Stat. 756, 759; Sec. 215(a)(2), Revenue Act of 1921, c. 136, 42 Stat. 227, 242; Sec. 215(a)(2), Revenue Act of 1924, c. 234, 43 Stat. 253, 271; Sec. 215(a)(2), Revenue Act of 1926, c. 27, 44 Stat. 9, 28; Sec. 24 (a)(2), Revenue Act of 1928, c. 852, 45 Stat. 791, 802; Sec. 24(a)(2), Revenue Act of 1932, c. 209, 47 Stat. 169, 183; Sec. 24(a)(2), Revenue Act of 1934, c. 277, 48 Stat. 680, 691; Sec. 24(a)(2), Revenue Act of 1936, c. 690, 49 Stat. 1648, 1662; Internal Revenue Code of 1939, Sec. 24(a)

or experimental costs incurred in the development of a new process, formula, or invention, the benefits of which would be derived beyond the year of the expenditure, were first regarded as nondeductibe capital outlays. Such costs could be only recovered by depreciation or amortization. Because of the difficulty in determining the useful life of such an asset or when a research project was abandoned so that a loss could be claimed, the Commissioner issued regulations in 1919 under the depreciation provisions allowing a taxpayer the option of either currently deducting or of depreciating "expenses in his business for designs, drawings, patterns, models, or work of an experimental nature calculated to result in improvement of his facilities or his product * * *." Regulations 45, 62 and 65, Article 168.

The Regulation, however, was apparently deemed not to apply to the costs of acquiring a patent, which were early held to be nondeductible capital expenditures.[6] In 1926, the Regulation was withdrawn and the courts continued to hold a wide variety of research or experimental expenditures to be nondeductible.[7] Indeed, in *Red Star Yeast & Products Co.* v.

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(2) (26 U.S.C. 1952 ed.). An application of the bar against deduction of capital expenditures is at issue and is awaiting decision this Term in *Commissioner* v. *Idaho Power Co.*, No. 73-263.

[6] *Gilliam Manufacturing Co.* v. *Commissioner*, 1 B.T.A. 967; *Goodell-Pratt Co.* v. *Commissioner*, 3 B.T.A. 30; *Beaumont Co.* v. *Commissioner*, 3 B.T.A. 822.

[7] *Canning* v. *Commissioner*, 29 B.T.A. 99; *Hazeltine Corp.* v. *Commissioner*, 32 B.T.A. 110; *Claude Neon Lights, Inc.* v.

Commissioner, 25 T.C. 321, the Tax Court adhered to its prior decisions holding research and experimental expenditures nondeductible under the 1939 Code, notwithstanding the statement of the Commissioner of Internal Revenue before the Joint Committee on Internal Revenue Taxation on April 4, 1952, that such costs were deductible if the taxpayer had adopted the practice of charging them to expenses under its established method of accounting (25 T.C. at 341-342; CCH Standard Federal Tax Reports, Vol. 5, ¶ 6170 (1952 ed.)).

2. It was against this background that Section 174 was added to the statute as part of the 1954 codification. The parallels to the earlier short-lived Regulation outstanding from 1919 to 1926 are striking. Both provide the option of either currently deducting research or experimental expenditures or amortizing them. The Regulation's requirement that such expenditures be "in [the taxpayer's] business" was carried over in the statutory phrase in Section 174(a)(1) that the outlays be "research or experimental expenditures which are paid or incurred by [the taxpayer] during the taxable year in connection with his trade or business." Section 174 (b), which provides an option to amortize such expenditures ratably over no less than a 60-month period, likewise requires

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Commissioner, 35 B.T.A. 424; *Addressograph-Multigraph Corp.* v. *Commissioner*, 4 T.C.M. 147; *Dempster Mill Mfg. Co.* v. *Burnet*, 46 F. 2d 604 (C.A. D.C.); *Hart-Bartlett-Sturtevant Grain Co.* v. *Commissioner*, 12 T.C. 760, affirmed, 182 F. 2d 153 (C.A. 8).

that they be paid "in connection with [the taxpayer's] trade or business." Section 174 (b)(1)(A).[8]

The common requirement in the early Regulation and Section 174 that deductible research or experimental expenditures be incurred in connection with the taxpayer's trade or business indicates that Section 174 was not intended to allow the deduction of all research or experimental expenditures. To the contrary, it has a far more limited scope. The trade or business nexus of Section 174 must be viewed in the context of two other provisions: (1) the general business expense provision of Section 162(a), which allows a deduction for "ordinary and necessary expenses paid * * * in carrying on any trade or business"; and (2) the general bar in Section 263 against the deduction of capital expenditures.

Formulation of the "trade or business" standard in Section 174 without the requirement that the expenditure be "ordinary" demonstrates that the provision was simply intended to permit current deduction of research or experimental expenditures incurred by a business without a showing that the benefits from

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[8] The only difference between the earlier Regulation and Section 174 is the latter's elimination of the necessity to determine useful life under the amortization option. Because the Regulation permitted depreciation of such costs, such treatment was available only if the research resulted in the creation of an asset with an ascertainable useful life. Section 174(b), however, specifically rests upon the unavailability of the deduction for depreciation. Section 174(b)(1)(C). It is thereby available to the class of research expenditures which do not result in the creation of specific assets with determinable useful lives.

them were derived and exhausted within a single taxable year. That Section 174 was intended to protect such costs expended by a business from classification as nondeductible capital expenditures is demonstrated by the statement in the statute that such outlays be treated as "expenses which are not chargeable to capital account." Furthermore, the simultaneous enactment in 1954 of an exception to the rule of Section 263 for "research and experimental expenditures deductible under section 174" confirms that this was the legislative purpose. Section 263(a)(1)(B). See also H. Rep. No. 1337, 83d Cong., 2d Sess., p. A65; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 225.[9]

This interpretation of the limited scope of the statute is supported by the legislative history. As the Senate Finance Committee observed with respect to this provision (S. Rep. No. 1622, 83d Cong., 2d Sess., p. 33):

> No specific treatment is authorized by present law for research and experimental expenditures. To the extent that they are ordinary and necessary they are deductible; to the extent that they are capital in nature they are to be capitalized and amortized over useful life. Losses are permitted where amounts have been capitalized in

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[9] To the extent that the election is made to amortize such expenditures, there would be an upward basis adjustment for an expenditure properly chargeable to capital account under Section 1016(a)(1). As the deferred expenses are deducted, there would be corresponding downward basis adjustments under Section 1016(a)(14). See S. Rep. No. 1622, 83d Cong., 2d Sess., p. 215.

connection with abandoned projects, and recovery through amortization is provided where the useful life of these capital items is determinable, as in the case of a patent. However, where projects are not abandoned and where a useful life cannot be definitely determined, taxpayers have had no means of amortizing research expenditures.

To eliminate uncertainty and to encourage taxpayers to carry on research and experimentation the House and your committee's bill provide that these expenditures, incurred subsequent to December 31, 1953, may, at the option of the taxpayer, be treated as deductible expenses. It also provides that a taxpayer may elect to capitalize such expenditures and if no other means of amortization is provided, may write them off over a period of not less than 60 months, beginning with the month in which benefits are first realized.

* * * *

See also H. Rep. No. 1337, 83d Cong., 2d Sess., p. 28.

Moreover, the elimination of the word "ordinary" in Section 174 also removed the necessity of a showing that a research or experimental expenditure was "of common or frequent occurrence in the type of business involved" under the first definition of that term adopted by the Court in *Deputy* v. *du Pont*, *supra*, 308 U.S. at 495. As a result, deductibility under Section 174 was not defendent upon the existence of a continuous program of research or experimentation under a regular budget which might be maintained only by large businesses. The provision thereby insures that small businesses as well can take ad-

vantage of the option to deduct or amortize such expenditures even if the outlays are infrequent or unusual.[10]

Under the statute, however, the expenditure must be incurred in connection with an existing "trade or business" of the taxpayer, whether large or small. This requirement—at issue in this case—is reaffirmed in the detailed discussion in the committee reports of the technical provisions of the statute, H. Rep. No. 1337, *supra*, pp. A57-A59; S. Rep. No. 1622, *supra*, pp. 214-216, as well as the case law. See, *e.g.*, *Stanton* v. *Commissioner*, 399 F. 2d 326 (C.A. 5); *Mayrath* v. *Commissioner*, 357 F. 2d 209 (C.A. 5), affirming 41 T.C. 582; and *Koons* v. *Commissioner*, 35 T.C. 1092.

3. The foregoing discussion of the terms and background of Section 174 demonstrates that Congress did not intend to allow deductions for research or experimental expenditures regardless of the context in which they were incurred. Such expenditures are deductible only if they arise in connection with the taxpayer's "trade or business." Contrary to the position of petitioner and the *amici*, this phrase—"trade or business"—cannot be interpreted in a vacuum without references to the other statutory provisions employing the "trade or business" standard.

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[10] See Statement of Under Secretary of the Treasury Marion B. Folsom, 1 Senate Hearings Before the Committee on Finance on the Internal Revenue Code of 1954, 83d Cong., 2d Sess., p. 123; Statement of Congressman Reed, 100 Cong. Rec. 3425; Statement of Congressman Knox, 100 Cong. Rec. 3553; and Statement of Senator Millikin, 100 Cong. Rec. 8998.

Thus, for example, in *Whipple* v. *Commissioner*, 373 U.S. 193, the question presented was whether a loss was sustained from the worthlessness of a debt "incurred in the taxpayer's trade or business" within the meaning of Section 23(k)(4) of the 1939 Code. Nevertheless, the starting point of the Court's analysis was a detailed review of its prior decisions interpreting the phrase "trade or business" as it appeared in the general business expense deduction provision. It noted that "[t]he concept of engaging in a trade or business as distinguished from other activities pursued for profit is not new to the tax laws" (373 U.S. at 197).

Similarly, here, both courts below appraised the facts of this case in the light of the long-standing judicial definition of the statutory term "trade or business." They concluded that neither petitioner nor the Burns Investment Company partnership were engaged in a trade or business with respect to the trash burning device because neither petitioner nor any other member of the partnership held themselves out as engaged in the activity of selling. An examination of the scope of the statutory term "trade or business," to which we now turn, confirms the correctness of that ruling.

B. The federal tax concept of "trade or business" requires engaging in the selling of goods or services and thereby precludes deductions under Section 174 for expenditures incurred simply in the hope of realizing a profit

1(a). From almost the very inception of the federal income tax, the statute has drawn a distinction between the broad range of income or profit producing activities and those which fit within the narrow category of trade or business. Thus, in the Revenue Act of 1916, Section 5(a) provided a deduction for those losses incurred in "business and trade" and those sustained "[i]n transactions entered into for profit but not connected with * * * business or trade." The distinction continues to exist in the present Code, which variously employs the terms "trade or business," "transaction entered into for profit," and "production of income" in a variety of contexts. See Appendix B, *infra*, pp. 43-44.[11]

The longstanding statutory distinction between a "trade or business" and other activities simply undertaken for the purpose of profit has been viewed by this Court as a fundamental differentiation between "business" activities and "investment" activities. Although the term "trade or business" is used throughout the Code, it is nowhere defined, either in the statute or the regulations, other than to include the performance of the functions of a public office. See Section 7701(a)(26) of the Code.

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[11] A list of the provisions of the Code employing these three phrases are set forth in Appendix B, *infra*, pp. 43-44.

Significantly, for purposes of this case, a "trade or business" has been defined by members of this Court as activity which "involves holding one's self out to others as engaged in the selling of goods or services." *Deputy* v. *du Pont, supra*, 308 U.S. at 499 (concurring opinion of Justice Frankfurter in which Justice Reed joined). Since the formulation of this classic definition more than three decades ago, it has been applied by the courts in considering whether a wide variety of activities constitutes a "trade or business" under several different provisions of the revenue statutes. *E.g., White's Will* v. *Commissioner*, 119 F. 2d 619, 621 (C.A. 3) (trustee's activities of supervising investments); *Helvering* v. *Highland*, 124 F. 2d 556, 561 (C.A. 4) (executor's estate management activities); *Daily Journal Co.* v. *Commissioner*, 135 F. 2d 687, 688 (C.A. 9) (management of newspaper); *Trent* v. *Commissioner*, 291 F. 2d 669, 670-671 (C.A. 2) (services to employer); *McDowell* v. *Ribicoff*, 292 F. 2d 174, 176-177 (C.A. 3), certiorari denied, 368 U.S. 919 (fiduciary's estate management activities); *Richmond Television Corp.* v. *United States*, 345 F. 2d 901, 907 n. 7 (C.A. 4), vacated and remanded *per curiam* on other grounds, 382 U.S. 68 (pre-operating expenses to train prospective staff); and *Stanton* v. *Commissioner*, 399 F. 2d 326, 329 (C.A. 5) (development of invention).

This accepted definition of the term "trade or business" contains two separate elements. First, it requires that the taxpayer hold himself out to others as so engaged. Second, it is essential that the par-

ticular activity involve "selling," either of goods or services. Thus conceived, the category of "trade or business" may embrace such diverse enterprises as the sale of services by a lawyer or an employee, the sale of a novel, or even of an idea. The point we emphasize is that the element of "sale" is an indispensable feature of all of these transactions and the means by which profit is realized.[12]

(b). Consistent with this definition, the Court subsequently held in *Higgins* v. *Commissioner*, 312 U.S. 212, that a taxpayer's handling and oversight of his own extensive stock and bond investments was not a "trade or business" for purposes of the business expense deduction. Such personal investment activities did not involve the taxpayer's holding himself out as engaged in the selling of goods or services. This was the case even though the taxpayer was engaged in continuous personal activity with respect to his investments which involved the full time operation of an office and staff. In *Higgins*, the Court expressly rejected a broad interpretation of the term "trade or business" which would embrace everything about which a person can be employed. Cf. *Flint* v. *Stone Tracy Co.*, 220 U.S. 107, 171. Instead, it held that the existence of a "trade or business" would depend

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[12] The case law has developed other criteria for the existence of a "trade or business." For example, the activity must be frequent, continuous, and regular and the participants must devote a substantial part of their time to its pursuit. See, *e.g.*, *Austin* v. *Commissioner*, 298 F. 2d 583 (C.A. 2); *Wright* v. *Commissioner*, 274 F. 2d 883 (C.A. 6); *Miller* v. *Commissioner*, 102 F. 2d 476 (C.A. 9).

upon the facts of each case as found by the trial court (312 U.S. at 217-218). See also *United States* v. *Pyne*, 313 U.S. 127, 129-131.

In response to the *Higgins* decision, Congress enacted Section 121(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798, 819, which added Section 23(a)(2) to the 1939 Code (Section 212 of the 1954 Code). This provision authorized for the first time the deduction of "non-trade" or "non-business" expenses, *i.e.*, those incurred in the "production or collection of income, or for the management, conservation, or maintenance of property held for the production of income." It is significant that in making such expenses deductible, Congress did not see fit to broaden the existing concept of trade or business, which had been restrictively interpreted in *Higgins* and which continued to be an important concept for purposes such as Section 174, the provision involved here.

Instead, it created a new category of income-producing activity. Indeed, the committee reports underscore the lack of any intent to alter the trade-or-business concept by pointing out that the amendment would allow deductions "whether or not such expenses are paid or incurred in carrying on a trade or business." See S. Rep. No. 1631, 77th Cong., 2d Sess., p. 87; H. Rep. No. 2333, 77th Cong., 2d Sess., p. 74. As Justice Frankfurter noted in his plurality opinion in *McDonald* v. *Commissioner*, 323 U.S. 57, 62 (in which Chief Justice Stone and Justices Roberts and Jackson joined), "The amendment of 1942 merely enlarged the category of incomes with reference to which expenses

were deductible. It did not enlarge the range of allowable deductions of 'business' expenses." See also *United States* v. *Gilmore*, 372 U.S. 39, 45.

2. In view of the "trade or business" requirement in Section 174, deductibility under that provision does not simply depend, as petitioner argues (Br. 12-15), upon the existence of a profit motive. To be sure, the absence of a profit motive may defeat a claim that an activity is a trade or business.[13] But, as the Court

[13] The absence of a profit motive is especially significant in disallowing so-called "hobby losses." See, *e.g.*, *Porter* v. *Commissioner*, 437 F. 2d 39 (C.A. 2), affirming *per curiam*, 28 T.C.M. 1489; *Bessenyey* v. *Commissioner*, 379 F. 2d 252 (C.A. 2), certiorari denied, 389 U.S. 931; *Yanow* v. *Commissioner*, 358 F. 2d 743 (C.A. 3), affirming *per curiam*, 44 T.C. 444; *Lamont* v. *Commissioner*, 339 F. 2d 377 (C.A. 2); *Hirsch* v. *Commissioner*, 315 F. 2d 731 (C.A. 9).

The *amici curiae* argue (Br. 8-9) that the purpose of Section 174 would be better served if the criteria under Section 183 were employed. That provision sets forth rules relating to the allowance of deductions for activities "not engaged in for profit" and essentially codifies the court-made law with respect to hobby losses. Unlike Section 174, the purpose of Section 183 is to provide rules for the disallowance of deductions with respect to expenses which are not allowable as trade or business expenses (Section 162) or as expenses incurred for the production of income (Section 212). The thrust of Section 183 is to provide objective rules for the determination whether an activity is engaged in for profit. It does not, however, purport to eliminate the bar against the deduction of the type of capital expenditures incurred by petitioner. If such expenditures are to be deductible, they must qualify under Section 174. Any importation of the criteria of Section 183 into Section 174, which is adressed to an entirely different problem, must be accomplished, if at all, by Congress.

reaffirmed in *Whipple* v. *Commissioner, supra,* a profit motive cannot of itself establish a trade or business.

If Congress had intended that all research or experimental expenditures were to be deductible whenever they were incurred in the hope of realizing a profit, Section 174 would have employed the broader "production of income" test of Section 212 rather than the more restrictive "trade or business" standard. Indeed, had Congress done so, research or experimental expenditures would be deductible with little regard to the seriousness of purpose with which they were incurred. Petitioner's argument simply ignores the plainly stated requirement of Section 174 that the expense be incurred "in connection with [the taxpayer's] trade or business."

Faced with the language of the statute and the well-established definition of the phrase "trade or business," petitioner concedes (Br. 13) that his partnership was not engaged in a "trade or business" as that term has been defined by the courts. He contends, however, that this term as used in Section 174 connotes a broader range of profitmaking activities, urging that the judicial definition of "trade or business" is relevant only with respect to those statutory provisions previously construed by the courts.

This argument, as we have noted, is contrary to the Court's analysis in *Whipple* v. *Commissioner, supra,* which looked not only to the Court's own prior decisions under the business expense provisions but

also to the Congressional response in 1942 to *Higgins.* In *Whipple*, the Court held that the meaning of "trade or business" under the bad debt provisions was identical to its meaning under the statutory allowance of a deduction for general "trade or business" expenses. The uniform meaning of the term throughout the Code is underscored by the Court's rejection of the taxpayer's claim in *Whipple* "against the background of the 1942 amendments and the decisions of this Court in the *Dalton, Burnet, du Pont* and *Higgins* cases * * *" (373 U.S. at 202). See also *Cooper Tire & Rubber Co. Employees' Retirement Fund* v. *Commissioner*, 36 T.C. 96, 100, affirmed *per curiam*, 306 F. 2d 20 (C.A. 6).[14]

Finally, petitioner's attempt to accord a unique definition to the phrase "trade or business" in Section 174 is expressly refuted by the legislative history (*supra*, pp. 19-20), which makes specific reference to the "ordinary and necessary" standard of the general business expense deduction provision of Section 162(a). The elimination of the "ordinary and necessary" requirement and the retention of the "trade or business" standard further demonstrates that the meaning of "trade or business" in the two statutes

[14] Petitioner suggests (Br. 16) that if the term "trade or business" in Section 174 had the same meaning as in Section 162(a), the former provision would have an explicit cross-reference to the latter. But the absence of such a cross-reference in the bad debt deduction provision involved in *Whipple* did not prevent the Court from invoking the meaning of "trade or business" as used in the predecessor of Section 162(a).

was intended to be identical.[15] To conclude otherwise would be to suggest that the congressional retention of the "trade or business" requirement in Section 174 was either inadvertent or that a phrase with a longstanding definition was to have a wholly different meaning in that provision. Neither possibility, we submit, offers a realistic interpretation of the statutory language. As Justice Frankfurter observed in

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[15] In support of his argument that Sections 162(a) and 174 have different standards, petitioner points (Br. 15-16) to the differing terminology of the two provisions. He notes that Section 162(a) uses the term "in carrying on any trade or business" while Section 174 speaks of expenses incurred "in connection with [the taxpayer's] trade or business." Petitioner thereby draws the conclusion that the language of the former provision is more consonant with the requirement of an existing business. Suffice it to say that there is no support in the legislative history to indicate that the phrases are to be accorded such a variant reading. Moreover, the Treasury Regulations under Section 162 frequently use the terms "connected with or pertaining to" and "in connection with"—phrases similar or identical to that of Section 174. See Treasury Regulations, Sections 1.162-1(a) and 1.162-17(a).

Finally, in reporting out the bill which added Section 23 (a)(2) to the 1939 Code (now Section 212 of the 1954 Code), the House Ways and Means Committee Report used the terms "in connection with" and "in carrying on" interchangeably. Thus, it stated (H. Rep. No. 2333, 77th Cong., 2d Sess., p. 75):

> A deduction under this section is subject, except for the requirement of being *incurred in connection with* a trade or business, to all the restrictions and limitations that apply in the case of the deduction under section 23(a)(1)(A) of an expense *paid or incurred in carrying on* any trade or business. [Emphasis added.]

See also S. Rep. No. 1631, 77th Cong., 2d Sess., p. 88.

a similar context in *McDonald* v. *Commissioner*, *supra*, 323 U.S. at 64—

> [A]s a system, tax legislation is not to be treated as though it were loose talk or presented isolated abstract questions of law casting upon the federal courts the task of independent construction. Tax language normally has an enclosed meaning or has legitimately acquired such by the authority of those specially skilled in its application.

3. Since the accepted definition of the term "trade or business" requires holding one's self out as engaging in the activity of selling either goods or services, there is necessarily a time in the history of any enterprise organized for profit when that test may be satisfied. Conversely, the period of time in which preparations are made for the commencement of the business do not constitute engaging in a trade or business. This is a necessary corollary of the definition which requires a sufficient degree of affirmative action so that it can readily and objectively be ascertained that the enterprise has begun to function.

While the making of sales and the flow of gross receipts is a persuasive indicium of the existence of a trade or business, the absence of sales and gross receipts need not be determinative. For example, the opening of an office by a young lawyer and his holding himself out as ready to perform the services of his profession would presumably constitute engaging in a trade or business even though he may not receive any fees for a substantial period of time. The

costs incurred for overhead during this period would be deductible as trade or business expenses. However, the pre-operating expenses borne by the young lawyer in deciding where to locate his office would not be deductible. The dividing line is the point in time when the taxpayer begins to hold himself out as engaged in selling of goods or services.

Thus, the courts have uniformly held that outlays incurred in investigating a new trade or business or preparing for the possibility of entering it are non-deductible. See, *e.g.*, *Richmond Television Corp.* v. *United States*, 345 F. 2d 901, 907 (C.A. 4), vacated and remanded *per curiam* on other grounds, 382 U.S. 68; *Weinstein* v. *United States*, 420 F. 2d 700, 701 (Ct. Cl.); *Stanton* v. *Commissioner*, 399 F. 2d 326, 329 (C.A. 5); *Dean* v. *Commissioner*, 56 T.C. 895, 902-903; *Abegg* v. *Commissioner*, 50 T.C. 145, 154, affirmed on other grounds, 429 F. 2d 1209 (C.A. 2), certiorari denied *sub nom. Cresta Corp. S.A.* v. *Commissioner*, 400 U.S. 1008; *Walet* v. *Commissioner*, 31 T.C. 461, 471; *Frank* v. *Commissioner*, 20 T.C. 511, 514; *Westervelt* v. *Commissioner*, 8 T.C. 1248, 1254-1255. As the Fourth Circuit stated in *Richmond Television Corp.* v. *United States*, *supra*, 345 F. 2d at 907:

> [E]ven though a taxpayer has made a firm decision to enter into business and over a considerable period of time spent money in preparation for entering that business, he still has not "engaged in carrying on any trade or business" within the intendment of section 162(a) until such time as the business has begun to

function as a going concern and performed those activities for which it was organized.

The Fourth Circuit indicated that this rule was equally applicable to claimed research or experimental expenditures under Section 174 by citing the cases in which Section 174 deductions were disallowed for lack of an existing trade or business. See 345 F. 2d at 907, n. 7.[16] Under both Sections 162(a) and 174, therefore, preparatory expenditures incurred prior to the commencement of the taxpayer's holding himself out as engaged in selling activities—the *sine qua non* of a "trade or business"—are not currently deductible. Their costs may be recovered, if at all, only through capitalization and depreciation.

We turn now to an examination of the facts of this case, which demonstrate that the activities of petitioner's partnership during 1966 were at most in

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[16] In arguing that he is entitled to current deductions under Section 174 in advance of the commencement of a trade or business by the Burns partnership, petitioner cites (Br. 8) the statement of Representative Camp in support of the argument that the provision was designed to help "small or beginning business enterprises." 97 Cong. Rec. A4326. Petitioner presumably infers that the settled line of decisions disallowing trade or business expense deductions have no application to outlays for research or experimental purposes. But the remarks of Representative Camp were made with respect to a wholly different bill introduced three years before the enactment of Section 174. Unlike the statute, that bill, which was proposed by the American Bar Association, had no requirement that such expenditures be incurred in connection with a trade or business. See H.R. 4775, 82d Cong., 1st Sess.; 75 Reports of the American Bar Association 130-132 (1950).

preparation for the possibility of entering a trade or business in the future.

C. The expenditures paid by the partnership to develop the invention prior to the time it was marketed were not incurred in connection with a trade or business

When the foregoing principles governing the definition of "trade or business" are applied to the facts of this case, it is plain that the expenditures paid by the partnership in 1966 were not deductible under Section 174. During that year, neither petitioner nor any other member of the partnership held themselves out as engaging in the activity of selling anything. In fact, the existence of the Burns partnership was unknown to the public (Pet. App. 23). Under no stretch of the imagination was there a going business in the accepted sense of that term.

Indeed, in 1966 the partnership had nothing whatsoever to sell because the invention was still in the development stage and did not even function properly.[17] In the opinion of the partnership's own patent

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[17] Disputing the relevance of the fact that the partnership had no product to offer during the taxable year at issue, the *amici curiae* argues (Br. 12-13) that it is unjust to limit the availability of the benefits of Section 174 to those enterprises engaged in marketing of a product. It contends that the effect of such an interpretation would be to deny the deduction for pre-marketing research costs to an enterprise developing an initial product while allowing it to an enterprise which is engaged in marketing another product, no matter how tenuous the connection may be between the developed product and the marketed product. Disallowance of a Section 174 deduction for the development of an initial product is simply a consequence of the statutory requirement of an

counsel, the device "ha[d] not yet been reduced to practice" (I-A. 103). No patent was issued until 1970, four years later (Pet. App. 23). Under these circumstances, the activities of petitioner and his partnership were at most an investigation into the future possibility of marketing a trash burning device.

As such, the expenditures incurred prior to the marketing of the device fall into the category of pre-operating investigatory outlays which the courts have consistently held nondeductible as "trade or business" expenses. There can therefore be no allowable deduction under a provision such as Section 174, which requires that the experimental expenditures be incurred "in connection with his trade or business."

Consistent with our view that Section 174 was intended simply to relieve research or experimental expenditures from the need to qualify under the "ordinary" standard of Section 162(a), the courts have construed the "trade or business" nexus of Section 174 to require a showing of an existing trade or business, which is completely lacking in this case. Thus, for example, in *Stanton* v. *Commissioner*, 399 F. 2d 326 (C.A. 5), the court held that the phrase

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existing "trade or business." However, the existence of a marketed product does not guarantee the availability of Section 174 treatment with respect to the development of another product. If the connection between the marketed product and the developed product is sufficiently tenuous, the Commissioner will disallow the claimed deduction. Compare *Mayrath* v. *Commissioner*, 41 T.C. 582, affirmed, 357 F. 2d 209 (C.A. 5), discussed *infra*, p. 36, with *Best Universal Lock Co.* v. *Commissioner*, 45 T.C. 1, discussed *infra*, p. 37 n. 18.

"trade or business" in Section 174 presupposes an existing trade or business of so as to exclude deductions for expenses incurred in the hope of realizing a profit or in preparation for the possibility of entering a new trade or business (399 F. 2d at 329). The court therefore denied a deduction under Section 174 for expenses incurred in attempting to invent a storm proof boat. See also *Koons* v. *Commissioner*, 35 T.C. 1092, 1100-1101.

Similarly, *Mayrath* v. *Commissioner*, 41 T.C. 582, affirmed, 357 F. 2d 209 (C.A. 5), denied a claimed Section 174 deduction for expenditures incurred in connection with the development of an experimental home. Despite the fact that the taxpayer was an inventor of farm implements, both courts found that the home was not built in the course of a trade or business. The Tax Court observed, in terms most appropriate to this case: "We think the statute was intended to be used in the realistic and practical sense of a *going* trade or business—a condition which does not exist here" (41 T.C. at 590) (Emphasis in original).[18]

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[18] To the same effect are *Downs* v. *Commissioner*, 49 T.C. 533; *Kilroy* v. *Commissioner*, 32 T.C.M. 27; *Cunningham* v. *Commissioner*, 27 T.C.M. 1219; *Scull* v. *Commissioner*, 23 T.C.M. 1353; and *Schafer* v. *Commissioner*, 23 T.C.M. 927. See also 4A Mertens, *Law of Federal Income Taxation*, Sec. 25.33, p. 169 (1972 ed.), which states: "It is clear that the statutory phrase 'trade or business' presupposes an existing business with which the taxpayer is directly connected. Expenditures made in investigating a potential new trade or

Indeed, the only reported decision relied upon by petitioner (Br. 16-17) that arguably supports his position is *Cleveland* v. *Commissioner*, 297 F. 2d 169 (C.A. 4). There, the taxpayer, a lawyer, had made extensive loans over a long period of time to an inventor who, for more than 10 years, had experimented with the invention of an inorganic liquid binding material and had applied for patents. After having made a number of advances, taxpayer entered into a trust agreement with the inventor regarding their respective interests in the compound. The Tax Court disallowed a deduction for the advances claimed under Section 174, holding that the arrangement constituted at most a sale by the inventor to the lawyer of a one-half interest in the invention in consideration of past monies advanced, and that the expendi-

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business, or preparatory to entering into such business, do not qualify for the application of Section 174(a) (1) of the Code."

Although petitioner (Br. 11) relies upon *Best Universal Lock Co.* v. *Commissioner*, 45 T.C. 1, *acq.* 1966-2 Cum. Bull. 4X, that case is distinguishable. There, the taxpayer, an existing business engaged in the manufacture and sale of locks, was permitted to deduct research and experimental expenditures incurred in the development of an isothermal air compressor. Based upon the corporation's long history of experimentation and efforts to develop new products, the Tax Court held that the expenditures at issue were "incurred in connection with [its] trade or business." Here, however, the Burns partnership's expenditures to develop the trash burner could not be linked to an existing trade or business because the partnership was not engaged in any trade or business. It was simply experimenting with a potential product that might become part of a future trade or business. Cf. Rev. Rul. 71-162, 1971-1 Cum. Bull. 97.

tures were not made in taxpayer's trade or business. The court of appeals, however, reversed and allowed the Section 174 deduction with respect to the post-agreement advances, characterizing the agreement as creating a joint venture which it held to be a "trade or business" of the taxpayer and the inventor.

The length of time over which the experimentation was conducted in *Cleveland* is significantly longer than in this case. But more importantly, unlike the subsequent decision of the Fourth Circuit in *Richmond Television Corp.* v. *United States*, *supra*,[19] the earlier *Cleveland* opinion of that court did not focus on the "trade or business" issue. It is therefore unclear what considerations led the *Cleveland* court to rule that a "trade or business" existed after the execution of the partnership agreement. As we have demonstrated, however, it is the performance of the specific activity of holding oneself out as selling which constitutes engaging in a trade or business. That factor was absent both here and in *Cleveland*.

Thus, to the extent that *Cleveland* is regarded as holding that the simple execution of a partnership agreement, without more, transforms non-deductible research and development expenditures into qualifying outlays under Section 174, we believe that such a conclusion was properly rejected as erroneous by the

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[19] As we have pointed out *supra*, p. 33, while *Richmond Television Corp.* dealt with a claimed deduction under Section 162(a), it correctly recognized that the "trade or business" standard under Section 174 is identical. See 345 F. 2d at 907 n. 7.

court of appeals (Pet. App. 40). Indeed, in the light of the Fourth Circuit's subsequent ruling in *Richmond Television Corp.* v. *United States*, *supra*, it is doubtful whether that court would follow its prior *Cleveland* decision.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APRIL 1974.

APPENDIX A

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 174. RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) *Treatment As Expenses.*—

(1) *In general.*—A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) *When method may be adopted.*—

(A) *Without consent.*—A taxpayer may, without the consent of the Secretary or his delegate, adopt the method provided in this subsection for his first taxable year—

(i) which begins after December 31, 1953, and ends after the date on which this title is enacted, and

(ii) for which expenditures described in paragraph (1) are paid or incurred.

(B) *With consent.*—A taxpayer may, with the consent of the Secretary or his delegate, adopt at any time the method provided in this subsection.

(3) *Scope.*—The method adopted under this subsection shall apply to all expenditures described in paragraph (1). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable

years unless, with the approval of the Secretary or his delegate, a change to a different method is authorized with respect to part or all of such expenditures.

(b) *Amortization of Certain Research and Experimental Expenditures.*—

(1) *In general.*—At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary or his delegate, research or experimental expenditures which are—

(A) paid or incurred by the taxpayer in connection with his trade or business,

(B) not treated as expenses under subsection (a), and

(C) chargeable to capital account but not chargeable to property of a charcter which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion),

may be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of section 1016(a)(1) (relating to adjustments to basis of property).

(2) *Time for and scope of election.*—The election provided by paragraph (1) may be made for any taxable year beginning after December 31,

1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the Secretary or his delegate, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

* * * *

APPENDIX B

I. *Substantive Provisions of the Internal Revenue Code Using the Phrase "Trade or Business"*

Sections 46(c)(3), 47(b), 48(i), 50A(c)(2)(B), 50B(c)(1), 57(b)(2), 62(1), 75(a), 103(c)(2), 108(a), 114(a), 116(d), 162(a), 163(d), 164(a), 165(c)1, 166(d)(2), 167(a)(1), 170(e)(1), 171(d), 172(d)(4), 174, 179(d)(1)(B), 182(d)(2)(A), 216(c), 217(f)(1)(B), 245(a), 264(a)(1), 268, 274(a)(1), 301(b)(1)(C), 311(d)(2)(B), 312(b)(2), 337(b)(1)(A), 341(b)(3)(B), 346(b), 355(b), 382(a)(1)(C), 401(c)(1), 404(a), 407(a), 421(a), 446(d), 455(c)(1), 456(c)(1), 471, 481(b)(4)(C), 502, 509(a)(2)((A)(ii), 512(a), 513, 514(b)(1), 543(a)(3), 545(b)(8), 556(b)(5), 702(a)(3), 707(c), 804(b)(3), 805(b)(4), 817(a), 822(b)(2), 832(c)(1), 842, 856(a)(4), 861(a)(1)(C) and (D), 864(b), 871(b), 872(a), 873, 875, 877(b), 881(a), 882(b), 884(2), 894(b), 904(f), 906, 911(b), 921, 931(a)(2), 934(b)(2), 952(b), 954(c)(3), 956(b)(2)(C), 957(c), 981(b)(2), 993(c), 996(g), 1031(a), 1033(g), 1054, 1221, 1231, 1236(a)(2), 1237(a), 1244(d)(3), 1253(d)(1), 1341(b)(2), 1402(c), 1441(c), 1442(b), 1451(a) and (b), and 3401(d)(2).

II. *Substantive Provisions of the Internal Revenue Code Using the Phrase "Production of Income"*

Sections 57(b)(2)(C), 62(5), 163(d)(3)(C), 164(a), 167(a)(2), 212(1) and (2), 216(c), 265(1) and 404(a).

III. *Substantive Provisions of the Internal Revenue Code Using the Term "Entered into for Profit"*

Sections 165(c)(2), 877(b), and 931(d)(2)(A).

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-641

EDWIN A. SNOW and HELEN B. SNOW,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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PRELIMINARY STATEMENT

Petitioners' Reply Brief appears in typed rather than printed form by permission of the Clerk, United States Supreme Court. Permission was granted because Respondent's brief, due March 23, 1974, was not received until 5:00 p.m. on April 4, 1974, in "proof" form, and not until April 8, 1974, in final printed form.

Forty (40) printed copies of this brief will be filed with the Clerk as soon as possible.

REPLY TO RESPONDENT'S STATEMENT

Respondent states, "Thereafter, Trott conceived the idea of a tape recording device and a leaf or trash burner, both of which the Crossbow employees began developing." (Res. Br. 3.) This implies Trott did not conceive the idea until sometime after he acquired an interest in Crossbow. The testimony of Trott, however, is as follows:

> "The identification of what I thought was the problem and the need occurred in late 1963, shortly before I resigned from Procter & Gamble. The idea concerning what to do about that problem, the problem being the disposal of leaves and trash, the first idea what to do about that problem did not occur until 1964. The final, what we hoped would be the final resolution of the problem occurred in 1966."

Trott went on to testify he personally spent at least one-third of his time on the trash burner from 1964 to 1966. (I-A. 50.)

Respondent points out that the Petitioner, in February or March of 1966, orally agreed to join in a limited partnership venture to assist Trott in financing the development of the device. (Res. Br. 4.) Petitioner also testified, however, that he was induced to become a member of the partnership on the strength of his own judgment, confirmed by patent counsel, that Burns had a unique and marketable way of incinerating or burning trash, and, secondly, that there was a considerable market for this kind of equipment and no such piece of equipment was then available on the market. (I-A. 19.) Trott further testified he formed the partnership not only to raise capital but also

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[1] "A" references are to the record appendix which is separately bound in two volumes. References to "I" and "II" are to the volume of the record appendix.

to gain the experience of the members of the partnership. (I-A. 76.)

REPLY TO RESPONDENT'S ARGUMENTS

SUMMARY OF ARGUMENT

A

Prior to the enactment of Section 174, there was no specific statutory treatment of research or experimental expenditures. There was considerable uncertainty whether these expenditures were deductible currently or were capital in nature, particularly in those cases involving small businesses with no regular research budget. This treatment at both the administrative level as well as in the courts resulted in discrimination against small businesses in favor of large, well-established businesses, thereby discouraging research by small and beginning businesses and fostering monopoly on the part of large and well-established businesses.

Having recognized this discrimination, Congress sought to alleviate the problem for small business by providing definite rules for the treatment of research and experimental expenses whereby small and large taxpayers would receive uniform treatment. This, said the Senate Finance Committee, would "help small, pioneering businesses." (H.R. 8300, 83d Cong. 2nd Sess. P. 105, April 7, 1954.) To this end, Section 174 of the Internal Revenue Code of 1954 was conceived, and after thorough examination by Congress, it was enacted into law.

Section 174 (a) provides:

"(a) Treatment as Expenses —

(I) In general — a taxpayer may treat research or experimental expenditures which are paid or incurred

> by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. *The expenditures so treated shall be allowed as a deduction.*" (Emphasis supplied.)

Notwithstanding the enactment of Section 174, the uncertainty which prevailed prior to its enactment has continued at both the administrative and judicial levels of government. The uncertainty is perpetuated largely by a continuing application of standards enunciated within the meaning of Section 162.

B

The issue in this case is whether Burns Investment Company incurred research or experimental expenditures during the taxable year 1966 "in connection with its trade or business" so as to be deductible under Section 174. Both courts below denied the deduction citing as authority cases decided under Section 162 of the Internal Revenue Code of 1954 and its predecessor Section 23 of the Internal Revenue Code of 1939 and earlier Revenue Acts, specifically the Revenue Act of 1928, *Deputy* v. *duPont,* 308 U.S. 488.

Respondent suggests, as did the lower courts, that the expenses here in question fall into the category of "preparatory" or "pre-operating" expenses in preparation for the possibility of entering a new trade or business, again relying on cases decided under Section 162 and its predecessor. Respondent would have us place research and experimental expenditures in the same category as preoperating expenses which are capital in nature and are never deductible until such time as the project is abandoned or is otherwise disposed of. This construction would render Section 174 useless as an incentive to encourage research and experimental expenditures in the development of new products, execpt for large well-established businesses. *Best*

Universal Lock Co., 45 T.C. 1 (1965) (Acq. C.B. 1966-2, 4). *Revenue Ruling 71-162,* (1971-1 C.B. 97).

The record, however, clearly shows that it is incorrect to categorize the expenses at issue here as "pre-operating." In this case, the general and managing partner (who is also the inventor) had carried the business well beyond the preparatory stage by the time the partnership was formed. He (the inventor) had constructed prototype models, conducted experiments, sought the advice of patent counsel as to patentability and had otherwise investigated the various approaches and was therefore beyond the investigatory, preparatory or pre-operating stage prior to formation of the partnership, Burns Investment Company.

Contrary to Respondent's assertions, (Res. Br. 11.) Petitioner does not acknowledge that his partnership was not engaged in a trade or business nor does he acknowledge that petitioner himself is not engaged in a trade or business. To the contrary, Petitioner argues he considered himself to be in the trade or business of inventing and developing new products by virtue of his activities in the three partnerships. (I-A. 29; I-A. 15.)

Petitioner does not argue, as Respondent contends, that "all Section 174 requires is the existence of a profit motive." (Res. Br. 11.) Petitioner argues, however, that a profit motive is an essential element in finding the existence of a trade or business, and a definite profit motive is clearly present in this case.

The term "trade or business" cannot be read in a vacuum as Respondent urges. Surely there is a different standard intended in Section 162 which uses the phrase "ordinary and necessary expenses incurred in carrying on a trade or business" as compared to the standard used in Section 174, "research and experimental expenditures paid or incurred by him in connection with his trade or business." In dis-

cussing the standard within Section 23 of the Revenue Act of 1928 (the forerunner of Section 162), this court stated: "The standard set up by the statute is not a rule of law; it is rather a way of life." *Welch* v. *Helvering,* 290 U.S. 111. Moreover, those sections of the Code wherein a Section 162 standard is intended are specifically linked together by adopting the term trade or business as used in Section 162. See Regulation 1.513-1 (b). Nowhere does Section 174 or the Regulation thereunder cross reference the term "trade or business" as used in that section with the term "trade or business" as used in Section 162. This court should therefore fashion a standard for the benefit of both taxpayers and government that will achieve congressional intent.

C

Respondent contends:

> "Neither the Petitioner nor any other members of the partnership held themselves out as engaging in the activity of selling anything. Indeed, the partnership had nothing whatever to sell because the invention was still in the development stage and did not even function properly. Under these circumstances, the activities of Petitioner and his partnership did not satisfy the elements of the well-established "trade or business" definition. They were at best an investigation into the future marketing or a trash-burning device. . . ."

Respondent's conclusion assumes there are two possibilities, namely: (1) investigatory, pre-operating expenses which do not qualify under a Section 162 standard, and (2) ordinary and necessary expenses incurred in carrying on a trade or business which clearly qualify under Section 162.

Petitioner submits Section 174 was enacted as an exception to Section 162 specifically providing for the deductibility of expenses qualifying as research and experimental expenditures. The strength of the statute should also remove Section 174 from a standard correlating to Section 162, i.e., investigatory, pre-operating.

A review of the development of the judicial doctrine of investigatory, preparatory and pre-operating expenses established by the lower courts will clearly show this was intended to distinguish those expenses meeting the Section 162 standard from those expenses that fall short of that standard.

Petitioner strongly contends Section 174 has its own standard which falls somewhere in between and separate and apart from the investigatory, preparatory and pre-operating standard and the Section 162 standard.

As to the stage of development of the trash burner in January of 1966 or the early part of 1966, the Respondent's witness testified as follows:

> "We had built a number of experimental models prior to that time with varying degrees of success. We had at that time to the best of my recollection a model and pretty clear cut specific ideas about how to bring that model to a state of commercial and practical effectiveness." (I-A. 51.)
>
> "I don't quite know how to answer there. We had a product on which we could have secured a patent at that time. The product we have now is in some ways essentially different. The product on which we got a patent, applied for a patent in 1969, was no further developed from the standpoint of being a finished manufactured product than the project we had in 1966." (I-A. 66.)

Although the partnership, Burns, did not have a perfected product ready for sale during the taxable year 1966,

it was clearly beyond the investigatory, preparatory stage. As a practical matter, it is impossible for a business to have research and experimental expenditures qualifying under Section 174, within the tests urged upon us by Respondent, during the development of its initial product. The practical result would be to force these research and experimental expenditures into the category of pre-operating expenditures and render them non-deductible and non-depreciable. The only time they would ever be deductible is upon abandonment of the project or where it is otherwise disposed of. This construction leaves Petitioner precisely where he would have been had he incurred the expenses in a year prior to the enactment of Section 174. This interpretation will discourage research and experimentation, stifle the search for new products and frustrate congressional intent.

Petitioner does not agree that, with one possible exception, the Sixth Circuit's Opinion below is consistent with all reported cases under Section 174. The Fourth Circuit Court of Appeals in *Cleveland* v. *Commissioner,* 297 F. 2d 169 (C.A. 4), correctly applied Section 174 and later correctly applied Section 162 in *Richmond Television Corp.* v. *United States,* 345 F.2d 901 (C.A. 4), vacated and remanded *per curiam* on other grounds, 382 U.S. 68, obviously grasping the distinction between the two statutes.

ARGUMENT

BOTH COURTS BELOW ERRED IN HOLDING THE RESEARCH AND EXPERIMENTAL EXPENDITURES AT ISSUE WERE NOT INCURRED IN CONNECTION WITH THE TRADE OR BUSINESS OF BURNS INVESTMENT COMPANY.

A. Introduction: The Background and Scope of Section 174

1. Respondent has covered the development of Section 174 by comparing it to Section 162. In this comparison, Respondent is careful to point out that Section 162 allows a deduction for "all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." Respondent has done an excellent job of tracing the development of Section 174 and 162. However, Respondent is unable or unwilling to release Section 174 from the bonds of or nexus of Section 162. Respondent's argument is built around cases employing a Section 162 standard, many of which were decided long before Section 174 was enacted. *Welch* v. *Helvering, supra. Deputy* v. *duPont, supra.* These cases are helpful for purposes of Section 162, however, none of the cases apply to Section 174 and the standard contained therein.

In the process of carving out an exception to what is now Section 162, Congress saw fit to eliminate the standard used in Section 162, "ordinary and necessary in carrying on any trade or business" and substitute therefor a new standard "in connection with his trade or business." The courts below have continued to follow the Section 162 standard with the exception of the Fourth Circuit Court of Appeals. *Cleveland* v. *Commissioner,* 269 F.2d 169 (C.A. 4). That

court has recognized the fine line of distinction existing within the statutes and has accordingly fashioned a standard in harmony with Section 174. Respondent, on the other hand, urges a continuation of the pre-1954 standard, citing a more recent case from the Fourth Circuit. *Richmond Television* v. *United States,* 345 F.2d 901. This case, however, did not mention *Cleveland, supra,* and did not involve Section 174 expenses.

Petitioner agrees with the definition of ordinary and necessary standard as set out in *Commissioner* v. *Tellier,* 383 U.S. 687, as quoted by Respondent. (Res. Br. 14.) Petitioner submits, however, that Respondent avoids an essential question which must be resolved before an adequate standard can be developed that will insure achieving congressional intent in the application of Section 174. That question involves the proper relationship between the Section 162 standard ("carrying on any trade or business") and the standard employed in Section 174 ("in connection with a trade or business.") This facet of the issue is glossed over by Respondent and the courts below.

2. Respondent has compared the Regulations issued by the Commissioner in 1919 under the Revenue Act of 1916 whereby the taxpayer was given the option of either currently deducting or depreciating "expenses in his business for designs, drawings, patterns, models, or work of an experimental nature calculated to result in improvement of his facilities or his product. . . ." Petitioner points out that even those Regulations did not require "the carrying on of a trade or busines," just as Section 174 today does not require the "carrying on of any trade or business." (Res. Br. 16.)

Respondent's contention (Res. Br. 18.) that Section 174 must be viewed in the context of Sections 162 and 263 is

perhaps correct. However, it must be remembered that Section 174 is not dependent upon Sections 162 or 263. Nowhere does Section 174 or the Regulation thereunder incorporate the standards of either Section 162 or 263. To the contrary, Section 174 is an exception to those sections and must therefore remain independent of them if it is to be a meaningful and viable statute.

Respondent has cited *Stanton* v. *Commissioner* 399 F.2d 326 (C.A. 5); *Mayrath* v. *Commissioner*, 357 F.2d 209 (C.A. 5); and *Koons* v. *Commissioner*, 35 T.C. 1092. In *Stanton* v. *Commissioner, supra,* the taxpayer sought to deduct expenditures in connection with the development of an experimental boat which was "storm-proof." The boat never was successfully tested, no letters patent sought, nor did the taxpayer attempt to market it. The court, in holding that the taxpayer was *not* engaged in a trade or business, generally discussed the issue as to what will qualify as a "trade or business" in order to deduct this type of expenditure. The court stated that much depends upon the facts of each case before the bar and that "mere working on inventions during the year in question with no activity of offering them for sale or license would be insufficient to show engagement in an inventing business." The points upon which the court relied in its determination that no trade or business existed are as follows: (1) taxpayer's activities were sporadic and not of sufficient sustained character so as to be deemed as engaging in the trade or business of an inventor or a boatbuilder; (2) he had only built a rowboat prior to the year in question; (3) no attempt was ever made to secure a patent on the hull design nor was a patent attorney ever consulted; (4) the boat was definitely not marketable nor was its feasibility ever proven; (5) the taxpayer admitted he did not expect to earn a profit during the years in question in the case. The court finally con-

cluded that the work which the taxpayer carried out concerning the boat was very similar to a hobby.

The record clearly shows the activities of Petitioner, through the partnership, were of a sustained character from the time the partnership was formed; that he was a member of two other partnerships that had then developed two other products which were held for sale or licensing; that patents, both domestic and foreign, were secured; that the burner's feasibility was ultimately proven by a successful entry into the market place; and that Petitioner entered into the partnership with the good faith expectation of realizing a profit.

In *Mayrath* v. *Commissioner, supra,* the taxpayer constructed an alleged experimental house at a cost of $287,-474.11 for his family's personal use. The court found the expenses incurred by the taxpayer in constructing the personal residence to be a personal living expense within Section 262 of the Internal Revenue Code of 1954. By no stretch of the imagination can this case apply to the instant case.

Neither *Stanton, supra,* or *Mayrath, supra,* are in point with the case at hand and offer little in defining "trade or business" as that term is used in Section 174.

In *Koons, supra,* the Petitioner purchased the rights to an invention which was in its early stages of development and entered into a developmental contract with a laboratory for its completion. All contacts with the research laboratory relating to the development were made by the taxpayer's son who acted for and on behalf of his father. The court found at Page 1101 that:

> "The research and experimentation was no doubt in anticipation of the organizing of a business to make business use of an end product when it reached the point of commercial acceptability. At the time the

> invention was bought by petitioner, however, it was in a preliminary laboratory state, and petitioner entered into the so-called Development Contract in part at least to get the benefiit of research specialists. He went no further than this in 1955, however. It is our view that this activity was preliminary to the coming into existence of a business in the year in question within the meaning of Section 174 (a) (1)."

The facts in the instant case differ substantially from the facts in *Koons.*

The Petitioner did not purchase an existing invention, enter into a Development Contract and appoint an agent to oversee the development. Instead, the Petitioner contributed capital while the inventor contributed all rights to the invention to form a partnership, the purpose of which was to continue the development of the incinerator. Unlike *Koons,* the inventor, Trott, conceived the incinerator device, spent at least one-third of his time on it from 1964 to 1966 when the partnership was formed, and thereafter continued as the general and managing partner. (I-A. 72.) Thereafter, the development of the trash burner was carried on through the partnership, Burns Investment Company, to a successful conclusion.

Respondent contends that "under both Section 162 (a) and Section 174, preparatory expenditures incurred prior to the commencement of the taxpayer holding himself out as engaged in selling activities — the *sine qua non* of a 'trade or business' — are not deductible." (Res. Br. 33.) Petitioner's response to that assertion is simply that Burns was not formed to engage in selling activities. It was formed to develop the incinerator device for the consumer and industrial markets. (I-A. 81) There was certainly a holding out of the partnership as being in the business for which it was formed. For example, the members of the partnership caused the partnership agreement to be filed

with the Clerk of Courts, Hamilton County, Ohio, pursuant to the laws of the State of Ohio. (I-A. 81.) The partnership entered into an agreement with a separate corporation to construct prototype models of the incinerator under the direction and supervision of the general partner and inventor. (I-A. 62.) The partnership held regular meetings during the taxable year 1966 where Petitioner participated in the evaluation of the incinerator device, made recommendations as to design features and explored and made recommendations as to various methods of successfully bringing the incinerator device to the market. (I-A. 70.) In those meetings, possible manufacturers were suggested to the general partner who, as the managing partner, had the authority and responsibility to follow up and negotiate sales and licensing arrangements. The degree of holding one's self out in a business situation is a matter of good business judgment. A prudent businessman who has a new item ready for the commercial market is going to minimize the attendant publicity for fear of having his concept pirated by a competitor. The partnership also applied for and was granted an Employer Identification number, filed Federal Income Tax returns, maintained books and records, maintained bank accounts and contracted with others for goods and services.

In addition, Petitioner's testimony is that various methods of marketing were considered including a licensing to another manufacturer. Actually, the form of marketing finally adopted was having the device manufactured and assembled by another manufacturer. Holding rights to a product for licensing, in this instance, is tantamount to holding one's self out as offering goods and services for sale.

3. Respondent states the court below concluded that neither Petitioner nor the Burns Investment Company

partnership were engaged in a trade or business with respect to the trash-burning device because neither Petitioner nor any other member of the partnership held themselves out as engaged in the activity of selling.

In *W. S. Farish* v. *Commissioner,* 103 F.2d 63 (C.A. 5), the court was faced with deciding a case under Section 23 of the Revenue Act of 1932, which provided for deductions from gross income by an individual for losses "incurred in 'trade or business'; or incurred in any transaction entered into for profit although not connected with the trade or business." In that case, the taxpayer had been in the business of training, breeding and selling polo ponies. During the year in question, the business had been in existence for five years, three years less than the eight years rquired for the breeding, training and development of such a pony. The taxpayer therefore had no sales during the year in question. The losses in question were nevertheless allowed.

The Tax Court's opinion below (Cert. App. 29) relied upon *Deputy* v. *duPont,* 308 U.S. 488, in construing the term "trade or business". That case involved construction of Section 23 (a) of the Revenue Act of 1928, the forerunner of Section 162 of the Internal Revenue Code of 1954. The standard of that section is "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." As pointed out earlier, Section 174 does not embody the same standard. In addition, the court held the expenses did not proximately result from the taxpayer's business, but from the business of the duPont Company. In the instant case, the expenses were those of the partnership which was not in the business of selling products or services, but of developing an incinerator device. (I-A. 14.) Moreover, *Deputy* v. *duPont* held that the activities in question in that case could *never*

amount to a trade or business and thus the case never addressed itself to a question critical to the instant case — when does a trade or business begin?

B. Holding Patentable Product or the Rights to a Product Concept for Sale or Licensing to Others is Tantamount to "Holding One's Self Out to Others as Engaged in the Selling of Goods or Services."

1. Respondent continues to argue that Burns Investment Company as well as Petitioner cannot be in a trade or business without offering the product itself, i.e., the trash burner, for sale. Petitioner submits, however, that holding rights or patents for licensing which would yield royalty income is tantamount to offering goods for sale in the ordinary course of business in much the same fashion as is holding real property for rent, See Headnote No. 2, *Whipple* v. *Commissioner*, 308 U.S. 488 (1963).

Respondent contends that one must hold himself out to others as selling goods or services and points out that Burns had no telephone listing, no sign on the building and no separate facilities for offices. The obvious response to that is there was no need to incur expenses for a telephone, for a sign or separate office facilities. Burns Investment Company has none of those things today and yet it is unquestionably carrying on business. (II-A. 169.)

As Respondent points out, *Higgins* v. *Commissioner,* 312 U.S. 212, holds that the existence of a "trade or business" depends upon the facts of each case as found by the triers of the fact. "Whether such activities constitute a "trade or business" as conceived by Section 23 (a) of the Revenue Act of 1928. . . . is open for determination here unfettered by findings and rulings below except for the weight of the intrinsic authority of all lower court opinions." *Deputy* v. *duPont, supra.*

2. Petitioner in no sense of the word concedes that his partnership was not engaged in a "trade or business."

Petitioner does not contend that the judicial definition of "trade or business" is relevant only with respect to those statutory provisions previously construed by the Courts. Certainly it is relevant to the extent it aids the Court in its analysis. It is Petitioner's position, however, that the phrase "ordinary and necessary expenses incurred in carrying on any trade or business" is a far different standard than the standard that expenses be incurred "in connection with his trade or business."

Respondent maintains that the term "trade or business" has a uniform meaning throughout the Internal Revenue Code. (Res. Br. 29) As authority for this proposition, Respondent cites *Cooper Tire and Rubber Co. Employer Retirement Fund* v. *Commissioner,* 36 T.C. 96, affirmed *per curiam,* 306 F. 2d 20 (C.A. 6). In that case the standards of Section 162 were used to decide a case under Section 513. Petitioner points out, however, that this "borrowing" of standards by the court was not done indiscriminately. The Senate Finance Committee Report which introduced Section 513 made explicit reference to Section 23 (a), the predecessor of Section 162. (S. Rept. No. 2375, 81st Cong., 2nd Sess., 1950-2 C. B. 483, 560.) Moreover, the Regulations promulgated under Section 513 make specific reference to "the requirements of Section 162." (I.R.C. Reg. 1. -513-1 (a) (1)) There is no similar cross reference between Section 174 and Section 162, either in the Congressional reports or in the Regulations under Section 174.

Respondent also places great emphasis on *Whipple* v. *Commissioner,* 373 U.S. 193. (Res. Br. 22, 28, 29), as did the Sixth Circuit in its opinion below (Cert. App. 42-44). *Whipple* taught that "investing is not a trade or business" and thus "bad debts arising from activities peculiar to an in-

vestor" are not deductible as business bad debts. *Whipple,* therefore, has no application to the question now before this court, i.e., was Burns Investment Company a "trade or business" within the meaning of Section 174 during the taxable year 1966.

C. At the Time of the Taxable Year in Question (1966), Burns Investment Company Had Advanced Well Beyond the "Investigatory" or "Pre-operating" Stage.

1. Respondent contends that the period of time in which preparations are made for the commencement of the business do not constitute engaging in a trade or business. (Res. Br. 31) Respondent first complicates the problem by imposing section 162 standards and then proceeds to oversimplify the solution by concluding that Petitioner fails to meet the Section 162 standards. Petitioner submits there is an existing body of law defining Section 162 standards which should remain intact, and that a Section 174 standard should be fashioned for Section 174 cases.

Petitioner contends there are perhaps three stages involved in the normal business venture, namely: (1) the preparatory or investigatory stage, (2) the pre-operating stage, and (3) the carrying on stage, i.e., commercial intercourse.

In the investigatory stage, there is no activity except the analysis or evaluation of a given business. The taxpayer may be investigating the potentiality by way of a feasibility study, a market survey or cost study or by traveling to the business sites. In this stage, the taxpayer is not yet engaged in a trade or business. Upon completion of the investigation a decision is made to enter into the business or abandon it. Expenses that fall into this category are clearly not ordinary and necessary business expenses within

the meaning of Section 162. *Morton Frank* v. *Commissioner,* 20 T.C. 511 (1953).

In the second stage, assuming the taxpayer has made the decision to go forward, the trade or business is formed. The vehicle for carrying out the venture is organized; the books and records are established. All of the elements are present in that the business nexus is formed except that products or services are not yet offered for sale. Expenses falling into this category may be "in connection with a trade or business," but do not yet meet the standards inherent in "carrying on a trade or business." See *Richmond Television Corp.* v. *United States,* 345 F. 2d 901; *Henry G. Owen,* 23 T.C. 377 (1954).

The third and final stage, which is contemplated by Section 162, is the point in time at which the business holds itself out as offering goods or services for sale. *Deputy* v. *duPont, supra.* This is the stage at which the business is being "carried on" as required by Section 162.

Petitioner contends in view of the nature of the expense sought to be deducted, he should not be held to a Section 162 standard which is admittedly more rigorous than the Section 174 standard. It is submitted that a Section 174 standard should be fashioned which would allow deductibility for those expenses which properly fall into stage two above, i.e., after the trade or business has been formed, but prior to the time it reaches full maturity, as evidenced by some type of selling activity.

In Respondent's discussion of pre-operating expenses, the followng example is cited:

> ". . . the opening of an office by a young lawyer and his holding himself out as ready to perform the services of his profession would presumably constitute engaging in a trade or business even though he may not receive any fees for a substantial period of time. The costs incurred for overhead during this period

> would be deductible as trade or business expenses. However, the pre-operating expenses borne by the young lawyer in deciding where to locate his office would not be deductible." (Res. Br. 31-2.)

If that is a valid premise, then a partnership holding a patentable product or other rights to a product for sale or licensing which would yield royalty income is engaged in a trade or business to the same extent the young lawyer is engaged in a trade or business. This is precisely the status of Burns Investment Company during the taxable year 1966.

There are many classifications within the Internal Revenue Code of expenses that are held to a less rigorous test than that required by Section 162 for purposes of current deductibility. For example, interest paid during the construction period of an apartment project, or other building project may be deducted currently. (Section 163) Soil and conservation expenditures may be deducted currently without regard to when the actual "carrying on" of the farming business commences. (Section 175) Intangible drilling costs may be deducted currently without regard to when the taxpayer commences to realize income from sales or has a saleable product. (Section 263)

The Respondent finally concludes that the activities of the Petitioner and his partnership were at most an investigation into the future possibility of marketing a trash-burning device. (Res. Br. 35) The Petitioner submits the investigatory stage was complete prior to formation of the partnership. The total purpose and function of the partnership was defined as "the development of a special-purpose incinerator for the industrial and consumer markets." (I. A. 81) The investigation has been done by Trott and Snow. (I. A. 19) This is clearly shown by the fact that Trott had received reports from patent counsel in De-

cember of 1965 advising that the incinerator device was patentable, (I. A. 98, 99, 100, 101) and by the numerous and sustained activities which the partnership had undertaken. Respondent's position in this case is that all of this activity is meaningless because of the lack of one item — sales. Such a position puts a new company in a manifestly unjust position. The company will be forced to choose between the following two alternatives:

(1) qualifying for Section 174 deductions by rushing an unfinished product into the market place; or

(2) following the much sounder approach of waiting until the product is fully developed and tested, and then paying for this prudence by being denied the availablity of Section 174.

Surely this type of dilemma is not what Congress intended when it enacted Section 174, which was intended to be "particularly valuable to small and growing businesses."

CONCLUSION

Petitioner submits that he, through the partnership, Burns Investment Company, incurred expenses for research and experimental purposes "in connection with his trade or business" within the proper meaning of Section 174.

Respectfully submitted,

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April 11, 1974

SNOW ET UX. v. COMMISSIONER OF INTERNAL REVENUE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 73-641. Argued April 16, 1974—Decided May 13, 1974

Petitioner Edwin A. Snow, who had advanced part of the capital in a partnership formed in 1966 to develop a special-purpose incinerator and had become a limited partner, was disallowed a deduction under § 174 (a)(1) of the Internal Revenue Code of 1954, on his individual income tax return for that year for his pro rata share of the partnership's operating loss. Though there were no sales in 1966, expectations were high and the inventor-partner was giving about a third of his time to the project, an outside engineering firm doing the shopwork. The Tax Court and the Court of Appeals both upheld disallowance of the deduction, which § 174 (a)(1) provides for "experimental expenditures which are paid or incurred by [the taxpayer] during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account." *Held:* It was error to disallow the deduction, which was "in connection with" petitioner's trade or business, and the disallowance was contrary to the broad legislative objective of the Congress when it enacted § 174 to provide an economic incentive, especially for small and growing businesses, to engage in the search for new products and new inventions. Pp. 502-504.

482 F. 2d 1029, reversed.

DOUGLAS, J., delivered the opinion of the Court, in which all Members joined except STEWART, J., who took no part in the consideration or decision of the case.

Burgess L. Doan argued the cause and filed briefs for petitioners.

Stuart A. Smith argued the cause for respondent. With him on the brief were *Solicitor General Bork*,

Assistant Attorney General Crampton, *Bennet N. Hollander*, and *Jane M. Edmisten*.*

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Section 174 (a)(1) of the Internal Revenue Code of 1954, 26 U. S. C. § 174 (a)(1), allows a taxpayer to take as a deduction "experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account." Petitioner Edwin A. Snow (hereafter petitioner) was disallowed as a deduction his distributive share of the net operating loss of a partnership, Burns Investment Company, for the taxable year 1966. The United States Tax Court sustained the Commissioner, 58 T. C. 585. The Court of Appeals affirmed, 482 F. 2d 1029 (CA6 1973). The case is here on a writ of certiorari because of an apparent conflict between the Court of Appeals for the Sixth Circuit and the Fourth Circuit in *Cleveland* v. *Commissioner*, 297 F. 2d 169 (1961).

Petitioner was a limited partner in Burns, having contributed $10,000 for a four-percent interest in Burns. The general partner was one Trott who had previously formed two other limited partnerships, one called Echo, to develop a telephone answering device and the other Courier, to develop an electronic tape recorder. Petitioner had become a limited partner in each of these other partnerships.[1]

**Charles H. Phillips* and *Ronald L. Blanc*, *pro se*, filed a brief as *amici curiae*.

[1] Both Echo and Courier claimed research and development expenses in 1965 and 1966; and they were not challenged by the Commissioner, apparently because their products were in a more

Burns was formed to develop "a special purpose incinerator for the consumer and industrial markets." Trott was the inventor and had conceived of this idea in 1964 and between then and 1966 had made a number of prototypes. His patent counsel had told him in 1965 that several features of the burner were in his view patentable but in 1966 advised him that the incinerator as a whole had not been sufficiently "reduced to practice" in order to develop it into a marketable product. At that point Trott formed Burns, petitioner putting up part of the capital. Thereafter various models of the burner were built and tested.

During 1966 Burns reported no sales of the incinerator or any other product but expectations were high; and Trott was giving about one-third of his time to the project, an outside engineering firm doing the shopwork.[2]

Trott obtained a patent on the incinerator in 1970 and it is currently being produced and marketed under the name Trash-Away.[3]

Section 174 was enacted in 1954 to dilute some of the conception of "ordinary and necessary" business expenses under § 162 (a) (then § 23 (a)(1) of the Internal Revenue Code of 1939) adumbrated by Mr. Justice Frankfurter in a concurring opinion in *Deputy* v. *Du Pont*, 308 U. S. 488, 499 (1940), where he said

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advanced stage of development and were available for sale or licensing.

[2] Treas. Reg. § 1.174-2 (a)(2) provides: "The provisions of this section apply not only to costs paid or incurred by the taxpayer for research or experimentation undertaken directly by him but also to expenditures paid or incurred for research or experimentation carried on in his behalf by another person or organization (such as ... [an] engineering company, or similar contractor). . . ."

[3] Prior to 1970 Burns was incorporated and it produces and markets Trash-Away, petitioner being its Chairman of the Board.

the section in question (old § 23 (a)) "involves holding one's self out to others as engaged in the selling of goods or services." The words "trade or business" appear, however, in about 60 different sections of the 1954 Act.[4] Those other sections are not helpful here because Congress wrote into § 174 (a)(1) "in connection with" and § 162 (a) is more narrowly written than is § 174, allowing "a deduction" of "ordinary and necessary expenses paid or incurred . . . in carrying on any trade or business." That and other sections are not helpful here.

The legislative history makes fairly clear the reasons. Established firms with ongoing business had continuous programs of research quite unlike small or pioneering business enterprises.[5] Mr. Reed of New York, Chairman of the House Committee on Ways and Means, made the point even more explicit when he addressed the House on the bill:[6]

> "Present law contains no statutory provision dealing expressly with the deduction of these expenses. The result has been confusion and uncertainty. Very often, under present law small businesses which are developing new products and do not have established research departments are not allowed to deduct these expenses despite the fact that their large and well-established competitors can obtain the deduction. . . . This provision will greatly stimulate the search for new products and new inventions upon which the future economic and military strength of our Nation depends. *It will be particularly valuable*

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[4] Saunders, "Trade or Business," Its Meaning Under the Internal Revenue Code, U. So. Cal. 12th Inst. on Fed. Tax. 693 (1960).

[5] Hearings on H. R. 8300 before the Senate Committee on Finance, 83d Cong., 2d Sess., pt. 1, p. 105.

[6] 100 Cong. Rec. 3425 (1954).

> *to small and growing businesses.*" (Emphasis added.)

Congress may at times in its wisdom discriminate taxwise between various kinds of business, between old and oncoming business and the like. But we would defeat the congressional purpose somewhat to equalize the tax benefits of the ongoing companies and those that are upcoming and about to reach the market by perpetuating the discrimination created below and urged upon us here.

We read § 174 as did the Court of Appeals for the Fourth Circuit in *Cleveland* "to encourage expenditure for research and experimentation." 297 F. 2d, at 173. That incentive is embedded in § 174 because of "in connection with," making irrelevant whether petitioners were rich or poor.

We are invited to explore the treatment of "hobby-losses" under § 183. But that is far afield of the present inquiry for it is clear that in this case under § 174 the profit motive was the sole drive of the venture.

Reversed.

MR. JUSTICE STEWART took no part in the consideration or decision of this case.